



Dispute Resolution Services

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

Decision

Dispute Codes: CNR, LRE, LAT, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy, an order suspending the landlord's right to enter the rental unit and an order authorizing the tenant to change the locks on the rental unit.

Issue(s) to be Decided

Does the landlord have grounds to end the tenancy?

Is the tenant entitled to an order restricting the landlord's access to the rental unit and permitting him to change the locks?

Background and Evidence

The parties agreed that on February 25 the tenant was served with a 10-day notice to end tenancy for unpaid rent, alleging that he had failed to pay rent for January and February 2009. The landlord claimed that the tenant's rent was \$1,150.00 per month, having been raised in November 2008 from \$1,050.00 per month. The tenant claimed that he did not receive a notice of rent increase and insisted his rent remained at \$1,050.00 per month. The tenant provided copies of receipts to the Residential Tenancy Branch showing that he had paid \$1,050.00 in rent for each of the months of January and February. The tenant attempted to give copies of the receipts to one of the landlords but that individual refused to accept them. I have allowed the receipts to be entered into evidence as I find it was open to the landlord to accept and review the receipts. The receipts were signed by the A.H. who was acting as the landlord's agent at the time and who also happens to be the tenant's mother. The landlord testified that A.H. is suspected of misappropriating funds and that if she did receive rent from the tenant, she did not give the money to the landlord. The landlord provided rent rolls from 2008 showing that the tenant is not recorded as having paid rent for several months and

as a result is many thousands of dollars in arrears. The tenant argued that he is not in arrears and has always paid rent to A.H.

The tenant testified that on one occasion approximately 2 months ago, F.H., who is one of the landlords, permitted contractors to enter his back yard to install a deck without having first given written notice or obtained his permission. The landlord testified that every time they entered a back yard or a rental unit they gave verbal notice. The tenant expressed concern that the landlord would continue entering the back yard or rental unit without giving written notice and asked that the landlord's right to enter the rental unit be restricted and that he be permitted to change the locks on the rental unit. The tenant acknowledged that the only time the landlord has entered the yard without notice was when the deck was installed and further acknowledged that the landlord has never accessed the inside of the unit without notice.

Analysis

In order to end the tenancy for unpaid rent, the landlord bears the burden of proving that rent was not paid. I find that the tenant's receipts provide sufficient evidence that rent was paid. While the landlord may suspect that A.H. has misappropriated funds, this does not mean that the tenant has not paid rent. The notice to end tenancy in question only addressed the issue of unpaid rent for January and February and I find that the tenant paid \$1,050.00 in each of those months. Although the landlord claimed that rent was increased to \$1,150.00 per month in November 2008, the landlord failed to enter into evidence a copy of a notice of rent increase and I further note that a \$100.00 per month rental increase exceeds the amount permitted under the Residential Tenancy Regulation. I find that \$1,050.00 per month was payable for rent in January and February and as I have already found that the tenant paid that amount, I find that the notice to end tenancy must be set aside. As a result, the tenancy will continue. I make no finding on whether the tenant paid rent any time during 2008.

As for the tenant's claim that the landlord's right to enter the rental unit be restricted and that he be permitted to change the locks on the rental unit, the testimony is clear that there has only been one occasion when the landlord accessed the rental unit without having provided 24 hours written notice. At the hearing the landlord was advised that

verbal notice of entry is insufficient. The landlord is referred to section 29 of the Act which is reproduced below.

29(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

29(1)(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

29(1)(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

29(1)(b)(i) the purpose for entering, which must be reasonable;

29(1)(b)(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

29(1)(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

29(1)(d) the landlord has an order of the director authorizing the entry;

29(1)(e) the tenant has abandoned the rental unit;

29(1)(f) an emergency exists and the entry is necessary to protect life or property.

29(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

I find that one illegal entry is insufficient to warrant an order restricting the landlord's access or permitting the tenant to change locks. The tenants claim for those orders is denied.

Conclusion

The notice to end tenancy is set aside. The claim for an order restricting the landlord's access to the rental unit and permitting the tenant to change locks is denied. As the tenant has enjoyed only partial success in his claim, I find it appropriate that each party

bear half of the cost of the \$50.00 filing fee paid to bring this application. The tenant

may deduct \$25.00 from future rent owed to the landlord.

Dated April 22, 2009.
