



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

CNR, CNC, OLC, PSF
OPC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent, and a second application by the tenant to cancel a One-Month Notice to End Tenancy for Cause, an Order to compel the landlord to comply with the Act and an Order to compel the landlord to provide services or facilities required by law. This hearing also dealt with a cross application filed by the landlord for an Order of Possession ending the tenancy for cause.

Both the landlord and the tenant appeared to

Issue(s) to be Decided

The issues to be determined on the tenant's Application based on the testimony and the evidence are:

- Whether the landlord's issuance of the Ten-Day Notice to End Tenancy for Cause should be cancelled
- Whether the landlord's issuance of the One-Month Notice to End Tenancy for Cause should be cancelled.
- Whether the landlord should be ordered to comply with the Act

- Whether the landlord should be ordered to provide services and facilities required by law

The issues to be determined on the landlord's application based on the testimony and the evidence is:

- Whether the landlord is entitled to an Order of Possession for Cause

The burden of proof is on the landlord/respondent to justify that the reason for the Notice to End Tenancy meets the criteria specified under sections 46 or 47 of the Act. The burden of proof is on the tenant to prove that the landlord is not following the Act and not providing services and facilities required by law and therefore should be ordered to do so.

Background and Evidence

The tenancy began on February 14, 2005. The tenant rents a room with kitchen and bath access shared with another tenant who separately pays rent to the same landlord, who lives upstairs. The rent was set at \$400.00 and no security deposit was paid.

The tenant testified that the landlord had issued a notice to end tenancy for cause served on the tenant on June 10 2009 although it was dated much earlier. The tenant testified that the notice did not indicate a cause.

The tenant testified that the landlord also issued a Ten-Day Notice for Unpaid Rent on July 2, 2009. However, according to the tenant, the rent is paid directly to the landlord by the ministry and the landlord had sent the rent cheque back refusing to accept it. The tenant testified that the rent was eventually retrieved and paid to the landlord.

The tenant testified that the landlord is trying to evict the tenant but is not following the rules. In addition, the tenant had complaints about the lack of access to a shower or bathtub and a vermin infestation of cockroaches, in addition to heating problems. The tenant also complained that the landlord had been storing items in the tenant's living area.

The tenant testified that discussions with the landlord to fix the deficiencies were not successful and that negotiations to vacate the unit with compensation from the landlord also failed because the landlord's offer was not enough

The landlord testified that the tenancy started when the tenant was supposed to live in the house to assist the late owner, who then passed away before the arrangement could start. The tenant was already living in the unit when the landlord took over, but the landlord wants this tenancy to end. The landlord testified that the Notice to End Tenancy for Cause was based on the landlord's desire end his rental business and move on. The landlord's aim was to take over the lower unit for landlord's use and not rent it any longer. The landlord is now aware that the One-Month Notice was not compliant with the Act and that he needed to issue a Two-Month Notice to End Tenancy for Landlord Use, instead.

The landlord agreed that he had issued the Ten-Day Notice to End Tenancy for Unpaid Rent and also freely admitted that he had refused payment and sent the tenant's rent cheque back to the Ministry because he wanted the tenancy to come to an end. The landlord testified that his offers to compensate the tenant and help the tenant relocate did not produce results as the tenant failed to cooperate.

The landlord also acknowledged that the bathroom facilities in the rental unit were deficient and that this constituted a failure to provide essential services, namely a tub or shower. In addition, the landlord stated that he is aware of the cockroach problem, but had hoped to address it once the lower unit was cleared out.

Analysis

Section 44 of the Act outlines the circumstances by which a landlord can end the tenancy. This can occur only if the landlord gives notice to end the tenancy in accordance with section 46, landlord's notice for non-payment of rent, section 47, landlord's notice for cause, section 48, landlord's notice for end of employment, section 49, landlord's notice for landlord's use of property. A tenancy can be ended by a tenant

with proper notice if it is a month-to-month agreement and a fixed term tenancy can be ended at the expiry of the fixed term. Other ways of ending a tenancy without violating the Act are through a written agreement signed by both parties or by obtaining a legal order to end the tenancy. A landlord can consider the tenancy ended by the tenant if the tenant abandons the unit. Finally a tenancy is deemed to end through 'frustration' which occurs when continuing the tenancy is impossible through the fault of neither party or through serious incidents that could not have been anticipated by the parties at the time the tenancy began.

Section 52 of the Act states that, in order to be effective, the notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.** (my emphasis)

The Ten-Day Notice to End Tenancy for Unpaid Rent under section 46 and the One-Month Notice to End Tenancy for Cause under Section 47, and the Two Month Notice to End Tenancy for Landlord's Use each have a separate form that must be correctly completed and served. In addition, all of the criteria listed for ending a tenancy under the applicable section of the Act must be met. A notice that is **not** in the required form, served properly on the tenant and issued for a situation that fully meets all of the applicable criteria contained in the particular section of the Act covering the reason stated, will not be enforceable.

I find that neither of the two Notices issued in this instance were supported under the Act and that neither complied with the alleged reasons that were given in the Notices.

If the landlord's motive in ending this tenancy was to take over the unit, as testified, then the landlord is required to first obtain, complete and serve the correct form for a Two-Month Notice for Landlord's Use. This Notice would be issued under section 49 of the Act which states that "*a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.*"

A landlord may terminate a tenancy for the above reason by giving notice on the proper form to end the tenancy effective on a date that must be (a) not earlier than 2 months after the date the tenant receives the notice, and (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this instance, according to the testimony of both the landlord and the tenant both of the Notices issued by the landlord were deficient in form or were issued for a different purpose than stated on the Notice. I find that both the Ten-Day Notice for Unpaid Rent and the one-Month Notice for Cause must be cancelled.

Given the above, I find that the landlord's application for an Order of Possession based on the Notice for Cause is not supported and must be dismissed.

Analysis - Order Landlord to Comply &
Order Landlord to Provide Services and Facilities required by Law

The tenant has requested that the landlord be ordered to comply with the Act and provide essential services by furnishing a working shower or bath and fumigating the unit to eliminate the cockroach infestation.

Section 32 **states that a** landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I find that the landlord is not in compliance with the Act in regards to the shower/bath issue and is not meeting its obligation under the Act to engage pest control to address the vermin infestation.

I grant the tenant's application for an Order compelling the landlord to provide access to the other bathroom in the building for the purpose of showering at least 3 times per week on a schedule arranged between the parties. The landlord and tenant have both consented to this interim measure.

In regards to the cockroach infestation, I order that the landlord is required to engage the services of a qualified pest control expert to fumigate the building. Both the landlord and tenant have agreed with this order being issued. .

Conclusion

Based on evidence and testimony above, I hereby cancel the One-Month Notice to End Tenancy for Cause and the Ten-Day Notice to End Tenancy for Unpaid Rent and order that they are of no force nor effect.

I order the landlord to give the tenant access to shower facilities located on the second floor of the building according to a regular schedule of at least three times per week, to be determined and arranged between the parties.

I further order that the Landlord immediately hire a qualified pest control company to treat the building for the infestation of cockroaches. The landlord's application is dismissed in its entirety without leave to reapply.

July 2009

Date of Decision

Dispute Resolution Officer