

DECISION

Dispute Codes CNC OLC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain an Order to cancel a notice to end tenancy issued for cause, to Order the Landlord to comply with the Act, and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, served personally by the Tenant to the Landlord on October 7, 2009.

Both the Landlord and Tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the Tenant entitled to Orders under sections 47, 62, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed facts are the verbal month to month tenancy began on February 1, 2007. The rent is payable on the first of each month in the amount of \$1,060.00 and the Tenant paid a security deposit of \$500.00 on December 1, 2006. The Tenant has been allowed to sub-let his rental unit and his tenants pay rent and report directly to the Tenant. The property was sold and new owners and property managers took over the property on December 1, 2008. The rental unit is in a three plex where there are two upper rental units and one lower rental unit.

The Landlord testified the lower rental unit was vacated and left empty and at the end of April one of the owners informed the Landlord that someone or some tenants from the upper rental units had been storing musical instruments and personal belongings in the lower suite. The owner instructed the Landlord to contact the tenants and inform them to remove their possessions immediately.

The Landlord testified that he spoke with the female tenant from the other upper unit and to the Tenant's sub-tenant and determined it was their property being stored in the lower unit. The Landlord told the female tenant and sub-tenant to remove their possessions immediately.

The Owner then attended the rental unit in August 2009 to find that the possessions were still being stored in the lower unit. The Owner boarded up the entrance to the lower unit, to prevent access, and instructed the Landlord to collect \$600.00 rent from the tenants who had used the lower unit and have them remove their possessions.

The Landlord stated that on August 21, 2009 the Tenant's sub-tenant and the female tenant from the other unit attended the Landlord's office to pay \$250.00 towards back rent of the lower unit and requested to keep access to this unit. The Landlord argued that the Owners refused to allow the tenants to keep using this space in the lower unit.

Near the beginning of September 2009 the Owner attended the rental units and requested permission to gain entry to the rental units to check smoke detectors. The Owner became angry when he determined that the smoke detector in the other unit had been disconnected and when he went downstairs he saw the barricade removed and the exterior lock of the lower unit had been changed.

The Landlord referred to the Owners statement provided in documentary evidence whereby he states that on September 4, 2009 he informed the tenants of both upper units that they will be "evicted for the damage or they will be required to sign a new tenancy agreement."

The Tenant testified that the Landlord never spoke to him about the issues relating to the down stairs unit however the Tenant found out later that the Landlord had spoken directly to the sub-tenant directly about these matters.

The Landlord confirmed that he never spoke to the Tenant about the issues surrounding the storage in the lower unit and that the Landlord knew that it was not the Tenant's possessions in the lower level, that they were the possessions of his sub-tenant and the tenants from the other unit.

The Tenant argued that he knew nothing of these issues until he received a letter from the Landlord informing him that he would be evicted if he did not sign the enclosed written tenancy agreement.

The Tenant testified that the Landlord was attempting to change his tenancy agreement by having the Tenant begin to pay utilities, as supported by his documentary evidence, when utilities had previously been included in his rent. The Tenant argued that he refused to sign the new tenancy agreement and was then issued a 1 Month Notice to End Tenancy for Cause which he received in person from the Landlord on September 29, 2009.

The Tenant testified that the sub-tenant was involved in storing items and changing the lock in the lower suite without the Tenant's knowledge. The Tenant argued that once he was made aware of the issue, after receiving the September 4, 2009 letter in the mail, he acted immediately by instructing his sub-tenant to return the original lock and to remove the possessions being stored in the lower unit. The Tenant stated that his sub-tenant had cleared out the lower unit and replaced the lock within two weeks of being told to do so by the Tenant and that the Tenant issued the sub-tenant an eviction notice

The Tenant's advocate stated that it was the Tenant's position that he rectified the breach within two weeks of being notified of the breach and that he believes he was issued the notice to end tenancy because he refused to sign the new tenancy agreement to have him begin to pay utilities. The Tenant is requesting that the Landlord comply with the original tenancy agreement and cancel the notice to end tenancy.

The Landlord confirmed that he did not inform the Tenant of the ongoing issues with his sub-tenant and the Landlord argued that to date, the Owner has not charged the Tenant the cost of utilities.

Analysis

The Landlord has issued the Tenant a 1 Month Notice to End Tenancy for significantly interfering with the landlord, that the Tenant has caused extraordinary damage to the unit/site or property, and for breach of a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.

Based on the evidence and testimony before me the Tenant was not notified that his sub-tenant had been involved in the incidents involving the lower rental unit until he received the letter mailed to him on September 4, 2009. I find that the Tenant took immediate action to ensure his sub-tenant rectified the situation and later issued his sub-tenant a notice to end tenancy. The testimony supports that the sub-tenant has moved out of the Tenant's rental unit.

In this case it was the sub-tenant who committed the breach, and while the Tenant is responsible for his sub-tenant's actions; the Landlord must notify the Tenant of the

breach in order for the Tenant to act. I find that the Tenant acted and rectified the breach within a reasonable amount of time, once he was notified, and I hereby Order the 1 Month Notice to End Tenancy, issued September 29, 2009 to be cancelled and of no force or effect.

I find the Owner's letter dated September 4, 2009 to be threatening and coercive towards the Tenant, in the Owner's attempt to have the Tenant sign a new tenancy agreement, which would result in the Tenant being responsible to pay the cost of utilities.

I caution the Landlord that under section 95(2) of the Act, any person who coerces, threatens, intimidates or harasses a tenant from making an application under the Act, or for seeking or obtaining a remedy under the Act, may be found to have committed an offence and is subject to a fine or administrative penalty.

I find that the Landlord has contravened section 13 of the Act when he entered into a tenancy agreement with the Tenant and did not provide the Tenant with a written tenancy agreement. I hereby order the Landlord to provide the Tenant with a signed, written tenancy agreement, listing the original terms of the tenancy, in accordance with sections 12 and 13 of the Act.

The Tenant has been successful in his application and I find that he is entitled to recover the \$50.00 filing fee from the Landlord.

Conclusion

The 1 Month Notice to End Tenancy issued on September 29, 2009, is HEREBY CANCELLED and of No Force or Effect.

The Landlord is HEREBY ORDERED to provide the Tenant with a signed, written, tenancy agreement listing the original terms of the tenancy agreement.

The Tenant is HEREBY ORDERED to reduce his next rent payment by \$50.00 in full satisfaction of his monetary award of \$50.00.

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: November 20, 2009.

Dispute Resolution Officer