

DECISION

Dispute Codes:

CNC, MT, MNDC, RP, LRE

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause; for more time to apply to set aside a Notice to End Tenancy for Cause; for a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to make repairs; and for an Order suspending the Landlord's right or establishing conditions on the Landlord's right to enter the rental unit. The Tenant withdrew her application for more time to apply to set aside a Notice to End Tenancy for Cause, as she has applied to set aside that Notice within the legislated time period.

Both parties were represented at the original hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

At the original hearing the Landlord stated that he submitted photographs to the Residential Tenancy Branch that was not available to me at the time of the hearing, although the Tenant stated that she was in receipt of those photographs. The Landlord declined the opportunity for an adjournment and elected to proceed with the hearing in the absence of the photographs. Those photographs were available to me at the reconvened hearing.

The original hearing was adjourned as there was insufficient time to conclude the matter, and the matter was concluded at the reconvened hearing on January 07, 2010. The Tenant was not represented at the reconvened hearing although she was clearly advised that she would be advised of the time and date of the reconvened hearing by the Residential Tenancy Branch and of her obligation to attend the reconvened hearing.

Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, should be set aside; whether the Tenant is entitled to a monetary Order; whether there is a need for an Order requiring the Landlord to make repairs to the rental unit; and whether there is a

need for an Order suspending the Landlord's right or establishing conditions on the Landlord's right to enter the rental unit.

Background and Evidence

At the original hearing the Landlord and the Tenant agreed that this tenancy began on November 01, 1996; that they have a written tenancy agreement, which has been submitted in evidence; and that the Tenant is required to pay monthly rent of \$412.00, which includes heat. The tenancy agreement does not stipulate that the Tenant has the right to store personal items in the common area that contains the furnace and electrical panels. The tenancy agreement specifically states that the Tenant "must keep house/suite clean and tidy".

At the original hearing the Landlord and the Tenant agree that the Tenant must access her rental unit through a common area that contains the furnace and electrical panels for the residential complex. The male Landlord stated that at the beginning of the tenancy the Tenant was advised that the common area was not her personal space; that part way into the tenancy she asked for, and received, permission to place a washer and dryer in the common area; and that part way into the tenancy the Tenant asked for, and received, permission to place a freezer in another storage area in the rental unit.

At the original hearing the Tenant stated that they did not discuss storing items in the common area at the beginning of the tenancy. She stated that she believes this is her storage space because she has assumed responsibility for cleaning it; that she has cleaned it when the area has flooded; and because she is the only Tenant who accesses a rental unit through this common area. She agrees that she asked for permission to store her washer and dryer in the common area shortly after the tenancy began and that she placed those items in the common area after obtaining the Landlord's permission.

At the original hearing the Landlord and the Tenant agree that a 1 Month Notice to End Tenancy for Cause was served on the Tenant on September 30, 2009. The Notice declared that the Tenant was required to vacate the rental unit on October 31, 2009. The reasons stated for the Notice to End Tenancy were that the Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord; that the Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk; that the Tenant has engaged in illegal activity that has, or is likely to, damage the landlord's property; that the Tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant; that the Tenant has engaged in illegal activity that has, or is likely to, jeopardize a lawful right or interest of another occupant or the landlord; and that there has been a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after receiving written notice to do so.

At the original hearing the male Landlord stated that he wishes to end this tenancy, in part, because the Tenant breached a material term of the tenancy agreement when she stored personal items in the common area beside the furnace in an untidy and unsafe manner and that she refused to remove those items after receiving written notice to move them.

At the original hearing the male Landlord stated that he verbally advised the Tenant to keep the furnace area free of clutter on many occasions during this tenancy. The Landlord submitted a letter, dated December 03, 2006, which the parties agree was delivered to the Tenant on, or about, December 03, 2006. The letter directs the Tenant to remove all clutter and debris that is within three feet of the hot water tank, electrical panel, and furnace in the common area. The parties agreed that the Tenant did move the items in this area but that items were subsequently placed in the area.

The Landlord submitted a letter, dated September 17, 2009, which the parties agree was delivered to the Tenant on, or about, September 17, 2009. The letter directs the Tenant to remove her personal items from the furnace area because she is not permitted to store personal items in that space. The Landlord stated that she has not yet removed her personal items from the common area.

At the original hearing the Tenant stated that she has not removed the property from the furnace area because she did not believe the Landlord had the right to inspect her property on two occasion in one month; because she was experiencing difficulty with her ankle that limited her mobility until early October; and because she believes that she has the right to store personal items in the common area.

At the reconvened hearing the male Landlord stated that the Tenant has still not removed her personal items from the common area. He reiterated that this is a common area and that another occupant of the residential complex must pass through this area to access a room where she stores her personal belongings; and that he has never given the Tenant verbal or written permission to store her personal belongings, other than a washer, dryer, and freezer, in any common areas of the complex.

Analysis

I find that the Landlord and the Tenant entered into a tenancy agreement that required the Tenant to maintain the property in a clean and tidy condition. Although I accept that the Tenant had authorization to store a washer, dryer, and freezer in the common area, I find, on the balance of probabilities, that her tenancy agreement did not authorize her to store other items in the area that houses the furnace. I find that this is a common area and that the Tenant may only keep property in this area with the consent of the Landlord. In reaching this conclusion, I was strongly influenced by the absence of any reference in the tenancy agreement to providing storage facilities; that this area contains a furnace and electrical panels that the Landlord and other occupants of the residential may, on occasion, need to access; that another occupant of the residential

complex must access this area to access her storage area; that tenants are not typically entitled to store personal items in common areas; and that the Tenant asked permission to put her freezer, washer and dryer in the common area, which she would not have done if she believed that she had the right to use this area. I find that keeping the common areas of the residential complex tidy is a material term of this tenancy agreement. I find that this is a material term of the tenancy agreement partly because it is specifically outlined in the tenancy agreement but primarily because in these circumstances it is a term that impacts the Landlord's ability to maintain the residential property and it impacts the ability of other occupants to enjoy the use of the common area.

Based on photographs that have been submitted by both parties, I find that the Tenant the items the Tenant has stored in the common area are not being stored in a tidy manner.

I find that the Tenant breached a term of her tenancy agreement when she stored items in the common area in an untidy manner. I find that she was directed, in writing, to remove the untidy items from the common area on September 17, 2009 and, by her own admission, failed to comply with that directive. On this basis, I find that the Landlord had the authority to end this tenancy pursuant to section 47(1)(h) of the *Act*, which stipulates that a landlord may end a tenancy by giving notice to end the tenancy if the tenant has failed to comply with a material term and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

The Tenant's claim for compensation in the amount of \$200.00; her application for an Order requiring the Landlord to make repairs; and her application for an Order suspending or setting conditions on the Landlord's right to access the rental unit were not considered at the reconvened hearing, as the Tenant did not attend to provide evidence on those matters.

At the reconvened hearing the male Landlord stated that the Tenant has been paying her rent and that the rent has been accepted on the basis of use and occupancy only.

Conclusion

As I have determine that the Landlord has satisfied the legislative requirements to end a tenancy for cause, I am dismissing the Tenant's application to set aside the One Month Notice to End Tenancy and I will grant the Landlord an Order of Possession, as requested at the hearing, that will be effective on January 31, 2010 at 1:00 p.m.

The Tenant's claim for compensation in the amount of \$200.00; her application for an Order requiring the Landlord to make repairs; and her application for an Order suspending or setting conditions on the Landlord's right to access the rental unit have been dismissed without leave to reapply, as the Tenant did not attend the reconvened hearing in support of those matters.

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: January 08, 2010.

Dispute Resolution Officer