Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

CNC, CNR, MNDC, OLC, RP, RPP, RR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Notice to End Tenancy for Cause dated October 30, 2009 and effective November 30, 2009 and to cancel a Ten-Day Notice to end Tenancy for Unpaid Rent dated November 2, 2009. The tenant's application also requested a Monetary Order in the amount of $2,640.00 for money owed or compensation for damage or loss under the Act, or agreement; an Order compelling the landlord to comply with the Act, an Order compelling the landlord to make repairs to the unit, site, property; an order to compel the landlord to return the tenant's property, an order allowing the tenant to reduce the rent for loss of services and facilities devaluing the tenancy and reimbursement by the landlord for the cost of the filing.

At the outset of the hearing the parties advised that the Ten-day Notice was no longer an issue as the tenant had paid the arrears within 5 days to cancel the Notice.

Both the landlord and the tenant appeared and each gave affirmed testimony in turn.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord's issuance of the One-Month Notice to End Tenancy for Cause was warranted or whether it should be cancelled. This requires a determination of whether the tenant or persons permitted on the property by the tenant:
    - significantly interfered with and or unreasonably disturbed other occupants or the landlord or;
    - Engaged in illegal activity that jeopardized the lawful right or interest of another occupant or the landlord.
    - Breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
- Whether the tenant is entitled to monetary compensation under section 67 of the *Act* for damages or loss. This determination is dependant upon answers to the following questions:
    - Has the tenant offered proof that the specific amount being claimed is validly owed by the tenant to this landlord?
    - Has the tenant submitted proof that a claim for damages or loss is supported pursuant to *section 7* and *section 67* of the *Act*?
- Whether or not there is proof that the landlord is violating one or more provisions of the Act and should be ordered to comply with the Act.
- Whether or not warranted repairs to the unit were neglected by the landlord, in which case an order compelling the landlord to complete the repairs should be issued.
- Whether or not an Order should be issued to compel the landlord to return the tenant's property

- Whether or not the tenant should be entitled to reduce the rent to compensate for repairs, services or facilities agreed upon but not provided.

The burden of proof is on the landlord/respondent to justify the reason for the Notice to end Tenancy under the Act. However, in regards to the remainder of the issues contained in this application the onus falls on the tenant/applicant to prove the case.

ISSUE: Notice to End Tenancy Background and Evidence

The tenancy began in June 2009 with rent set at $1,100.00 and a security deposit of $550.00 was paid. The landlord testified that a One-Month Notice to End Tenancy for Cause was issued on the basis that the tenant the tenant had significantly interfered with and or unreasonably disturbed other occupants or the landlord and also engaged in illegal activity that jeopardized the lawful right or interest of another occupant or the landlord. The landlord testified that, in addition, the Notice was based on the fact that the tenant had breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that the tenant began to use a vacant lot which was owned by the landlord and was not part of the tenancy to store a large compost pile. The landlord testified that no permission was granted to allow the tenant to make use of the lot and, in fact, the tenant was made aware that the landlord was developing the site to put it up for sale. The landlord testified that the tenant was verbally asked to remove the compost and made promises to do so which the tenant did not keep. A written request that the lot be cleaned up was given on October 28, 2009. A copy of this letter and numerous photos of the property were submitted into evidence by the landlord. The landlord testified that when the tenant did not remove the compost pile, a One-Month Notice was issued on October 30, 2009 ending the tenancy. The landlord pointed out that more than 3 weeks have since transpired awaiting the dispute resolution hearing and the tenant has still not removed the debris. The landlord also pointed out that the

tenant was using the lot for his business operations, which violated a provision in the tenancy agreement that restricts the use of the rental property to residential use only and disallows "*trade, business or other income-producing purposes*".

The landlord described other conduct by the tenant that the landlord believed would be valid cause to support ending the tenancy on the basis that it significantly interfered with the landlord and breached the tenancy agreement. The landlord testified that the tenant interfered with the landlord's access and the vehicle access of the contractors to the strata lane leading to the vacant lot. The landlord testified that at one point the tenant parked his truck sideways in the driveway.

In addition to the above, the landlord felt that the abusive tone of some telephone messages left by the tenant would support ending the tenancy for cause. The landlord provided written transcripts of the messages.

The tenant testified that near the start of the tenancy, the landlord had given verbal permission for the tenant to use the vacant lot and later had requested that the tenant remove some of the larger branches, which the tenant did. The tenant pointed out that some of the compost had come from the landlord's property and the tenant was attempting to store the compost to make some profit in the spring. The tenant acknowledged that when the letter from the landlord arrived, making it clear that the landlord did not want the vacant lot used by the tenant to store compost, the tenant was fully aware that the landlord's permission, if given prior, was not in effect as of October 28, 2009, the date of the letter. The tenant conceded that he would remove the compost, but that the 3 days given between the written warning letter and the One-Month Notice did not give the tenant sufficient time to remove the debris. The tenant stated that no action was taken pending the outcome of the dispute resolution hearing. However, the tenant made a commitment to eliminate the compost pile within two weeks of the date of the hearing.

In response to the landlord's allegations that the tenant interfered with the landlord's vehicles and activities of the contractors excavating the premises, the tenant testified that the landlord appeared without giving the tenant written notice and frequently parked in such a manner that blocked the tenant's vehicles. The tenant testified that he was not aware that the driveway was a strata, but stated that there was plenty of room for the tenant's vehicles to park with a lane left open for the landlord's vehicles to access the landlord's property behind.

On the matter of the abusive telephone messages left by the tenant, the tenant apologized, explaining that the landlord's repeated notices had greatly upset the tenant. The tenant agreed to contact the landlord in written form in future through letters or email.

Analysis of Issue - Notice to End Tenancy

I find that the events as described by the landlord, if true, would not completely meet the criteria under section 47(1) (d)(i), 47(1)(e)(iii), and 47(1)(h) which provide that a tenancy can be ended for cause if the tenant or a person permitted on the residential property by the tenant has either significantly interfered with, or unreasonably disturbed another occupant or the landlord or has engaged in illegal activity that jeopardized the lawful right or interest of the landlord or another occupant or has breached a material term that was not corrected within a reasonable time after written notice to do so.

I find that, while there is no question that there was no term in the tenancy agreement granting the tenant a right to store anything on the landlord's other property and that the tenant did not have the landlord's permission to do so, I note that the written warning to remove the compost was issued only three days prior to the One-Month Notice to End Tenancy for Cause. I accept the tenant's testimony that the compost removal would take some time to finish and the tenant's commitment that it will be completed within two weeks with a deadline of December 10, 2009, failing which the landlord is within its right to issue another One Month Notice to End Tenancy for Cause.

In regards to the tenant's conduct in blocking the driveway, I find that there may have been some misunderstanding by the parties in regards to the tenant's and landlord's rights. Although the landlord felt that it should have been obvious to the tenant that the driveway was shared, I find that the tenancy agreement does specifically state that the laneway is a strata nor is there a term that prohibits it from being completely blocked at any time by the tenant. However, I find that it will henceforth be an implied term in the tenancy agreement that the tenant is prohibited from blocking vehicle access to the vacant lot. That being said, I find that the laneway must also not be completely blocked by the landlord either, except where necessary for a valid purpose, and where 24-hours written notification has been given by the landlord to the tenant in compliance with section 29 of the Act. I further find that the landlord, and others permitted by the landlord, will remain at liberty to utilize this driveway to access the vacant lot and I find that no written notice need be given to the tenant when the landlord or others are going to be at the vacant lot, so long as their activities will not be interfering with the tenant nor involve coming onto the tenant's property. As I have found that there is no specific provision in the agreement, if follows that the tenant was not in violation of a material term contained in the contract.

In regards to the angry messages left on the landlord's answering machine by the tenant , I find that any series of messages that contained threats of violence, foul language or are of a frequent and repetitive nature could certainly be considered as valid cause to support a One Month Notice and I caution the tenant in this regard. However, although the tone of the messages was certainly rude, I do not find that they constitute threats of physical violence or that they were aimed to harass. Given the nature of the calls, I find that the landlord would deserve an apology and I note that the tenant did make an apology of his own volition during the hearing.

Given the above, I find that the conduct of the tenant would not quite meet the threshold of significantly interfering with and unreasonably disturbing the landlord.

Based on the testimony and evidence presented, I find that the One-Month Notice issued by the landlord dated October 30, 2009 must be cancelled and of no force nor effect.

Other issues in the Tenant's Application

Order the Landlord to Make Repairs

In regards to the portion of the tenant's application dealing with the request for an order against the landlord for repairs, I find that section 32 of the Act imposes a certain amount of responsibility on both the landlord and tenant in terms of caring for the property. The Act states that a landlord must provide and maintain residential property in a state of decoration and repair that would comply with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, making it suitable for occupation by a tenant.

I find that, in order to hold a landlord remiss in fulfilling the landlord's responsibility to maintain the rental unit, under section 32, the tenant would first need to make sure that the requested repairs were communicated to the landlord. However, even if the tenant does ask the landlord to complete repairs, merely making a request does not necessarily prove that the repair is warranted, nor does it serve to validate the complaint.

Generally speaking, once it has been established that the damage exists it should be addressed without delay if there is a health or safety issue. On the other hand, where a tenant is seeking an improvement or aesthetic enhancement, that does not clearly qualify as "damage", then it is unlikely that the landlord's failure to act could be considered as a violation of the Act.

In this instance, the tenant had some concerns about the condition of the rental unit, the building and the grounds in several respects. However I find that these complaints were not properly communicated to the landlord to make the landlord aware of the problems being alleged. In fact I find that the tenant had not given the landlord a fair opportunity to

investigate and act on the repair complaints prior to seeking dispute resolution. Given the above and as I have found that there was no violation of the Act or agreement by the landlord in regards to repairs, I decline to issue any order compelling the landlord to make repairs and I dismiss this portion of the tenant's application.

Order to Return Property

The tenant had alleged that some equipment had been left in an unsecure place because of the landlord's failure to provide keys to secure storage and had gone missing. On this basis, the tenant is requesting that the landlord return the tenant's property. I find that there was no evidence to prove that the landlord is in possession of the missing tools and I therefore must dismiss this portion of the tenant's application..

Order Landlord to Comply with Act

The tenant's application also requested an order to compel the landlord to comply with the Act. I find that the Residential Tenancy Policy Guidelines states that the landlord must give each tenant at least one set of keys for the rental unit, main doors, mail box and any other common areas under the landlord's control, such as recreational or laundry rooms. The tenant must return all keys at the end of the tenancy, including those he or she had cut at his or her own expense.

I find that the landlord failed to provide keys for some of the doors and storage areas, and did not provide sufficient copies so that each tenant had a set of keys. The landlord has agreed to comply with this requirement and to provide the keys without delay.

Claim for Damages

The tenant has made a monetary claim for compensation under section 67 of the *Act* for damages or loss in the amount of $2,640.00 comprised of $400.00 per month for four months as rent abatement in recognition of a devalued tenancy due to the condition of a portion of the residence, $650.00 for missing tools that the tenant felt was caused by the

landlord's failure to provide a key to access secure storage, $350.00 for the tenant's work and materials in sealing an attic door and $40.00 for garbage pick-up.

In regards to an Applicant's right to claim damages from another party, Section 7 of the Act states that if a party does not comply with the Act, regulations or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7. It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the tenant, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the landlord. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant took reasonable steps to address the situation and to mitigate the damage or losses that were incurred.

In regards to the tenant's testimony that there were condition problems with a one area of the unit that, according to the tenant, rendered it unusable, I find that no violation of the Act could exist unless health or security issues were involved. However, if proposed improvements were promised as part of that agreement, then this term could be enforced under the Act. In this instance, I do not find any term in the tenancy agreement that required the landlord to complete any improvements such as repainting. I find that the tenant agreed to rent the unit in the condition it was in. I also find that the tenant has not sufficiently proven that the area in question was unusable..

I find that the claim for $400.00 per month rent abatement based on unusable space failed to satisfy a single element in the test for damages and I find that this portion of the tenant's application must be dismissed.

I also find that the tenant's claim for $650.00 compensation by the landlord for stolen tools was not sufficiently proven as it failed to meet the test for damages. I find that this portion of the application must be dismissed.

I find that the monetary claim to be reimbursed $350.00 for the work performed in sealing the attic had no merit as it failed to meet element 2 of the test for damages as there was no proven violation of the Act by the landlord. I find that the landlord did not refuse to make the repair in question. Even if the landlord had been told about the problem and *had* refused to fix the problem, the tenant would then have the option of making an application for dispute resolution to obtain an order forcing the landlord to make the repairs, rather than taking on the work himself and expecting repayment. I find that this portion of the tenant's application must be dismissed.

Rent Reduction as Compensation

In regards to the tenant's request that rent in future should be reduced to compensate for repairs, services or facilities agreed upon but not provided, I find that the tenant failed to present sufficient evidence to prove that a tangible loss of the value of the tenancy had occurred due to the absence of repairs, services or facilities that were

purportedly included in the tenancy agreement but allegedly not provided by the landlord. Therefore I find that this portion of the tenant's application must be dismissed.

Conclusion

The parties have agreed to comply with the Act in the following manner:

- Neither party will be permitted to completely block the driveway
- The landlord may access the vacant lot via the strata lane without notifying tenant.
- The tenant will remove anything stored on the vacant lot by December 10, 2009 and will refrain from using the lot for storage, parking or any other purpose.
- The landlord is required to give 24 hours written notice if the landlord intends to inspect the rental unit or conduct repairs on the rental unit.
- The parties will communicate in written form regarding requests and complaints
- The landlord has agreed to provide keys to each adult tenant for all doors accessing the rental unit, storage or other lockable sites.

Based on the evidence and the testimony discussed above, I hereby order that the One-Month Notice to End Tenancy is cancelled and of no force nor effect.

The remainder of the tenant's application is dismissed as all of the issues have either been resolved by agreement or were found to have no merit.

November 2009 _____

Date of Decision Dispute Resolution Officer