wDECISION

Dispute Codes CNC, CNR, LAT, FF, O

Introduction

This hearing was convened by way of conference call to deal with an application by the tenant to cancel a 1 Month Notice to End Tenancy for Cause and for unpaid rent, as well as an application for an order authorizing the tenant to change the locks on the rental unit. All parties appeared and gave affirmed testimony.

Issues(s) to be Decided

Should the notice to end tenancy be cancelled?
Should the tenant be authorized to change the locks on the rental unit?

Background and Evidence

This month-to-month tenancy began on September 1, 2009. Rent in the amount of $725.00, as well as $45.00 for Satellite TV, are both payable on the 1st day of each month. The tenant also pays 1/3 of the hydro bill, which is to be paid when delivered by the landlord. At the outset of the tenancy, the tenant paid a security deposit in the amount of $362.50.

The rented unit is an apartment above a garage next to the landlords' home. Both the hydro bill and the Satellite TV bill are in the landlords' name.

The landlord served a 1 Month Notice to end Tenancy for Cause on February 9, 2010 and served it on the tenant the same day by posting it to the door of the residence. The notice is deemed to be served 3 days after such service.

The landlord testified that she received a hydro bill that covered the period of November 20, 2009 to January 19, 2010. The share of the bill for this tenant is $75.09, which she paid when it was due on February 1, 2010, and she is still waiting for the tenant to

reimburse her. The tenant argued that no one told him there was a hydro bill due, or he would have paid it in full.

The landlord testified that she had the Satellite TV service disconnected on February 4, 2010, and the tenant has now paid it in full.

The landlord also testified that in January, 2010, a gentleman from Terasen Gas arrived to disconnect the natural gas service to the unit, but because he knows the landlords personally, he advised the landlords about the disconnection due to unpaid gas bills. Had it been a different service man from Terasen Gas, the landlords would not have known that the gas was being disconnected.

The Tenancy Agreement was submitted as evidence, but the copy provided is missing the last page. The evidence of the landlords is that the agreement included a “no smoking” and “no pets” clause in the rental unit. This is not disputed by the tenant.

The landlord testified that the tenant has been smoking in the unit and a dog has been in the unit as well. She stated that the tenant’s girlfriend has a dog, and she has seen dog food inside the residence. The tenant argued that he keeps the dog food in the house to discourage other animals and does not let his girlfriend’s dog into the house, however the landlord argues that she has heard the dog barking from inside the residence day and night, and that the unit smells like smoke. The male landlord stated that on occasion he gets mail that belongs to the tenant, and when he delivers it to the tenant, and when he takes the garbage out on Mondays, he has personally seen the white dog in the residence.

The landlord also testified that the tenant let off some fireworks from the front door on the front deck of the rented unit, which is a fire hazard. The tenant did not dispute the fact, and admitted that it was one roman candle. He testified that he had apologized, and stated that he was not endangering anyone’s life.

The landlord testified that the tenant was away for approximately 2 months in December, 2009 till the end of January, 2010. While he was gone, the landlord noticed that the furnace wasn’t working and called the tenant on his cell phone, then went into

the unit and discovered that the furnace was set to “summer fan” which caused the heat to turn off and the pipes under the kitchen and bathroom sinks to freeze, and then they began to leak. A plumbing and heating technician was called, and the ignition switch on the furnace needed to be replaced. She stated that she spoke to the tenant about it, and the tenant agreed to pay for the service call and repairing, and the landlord would pay for the ignition switch. This is disputed by the tenant, who testified that he didn’t agree to pay for any part of it.

The landlord’s 1 Month Notice to End Tenancy for Cause is dated February 9, 2010 with an expected move out date of March 15, 2010. The landlord testified that she realized that she had made an error and could not legally issue a 1 month notice unless the expected move out date was March 31, 2010.

The tenant testified that the landlord called him on February 17, 2010 to tell him that the notice had the incorrect date, but also told him that she wanted him to move out so that her son could move in. He stated that the landlord wanted him to sign something in writing that stated that he would move out by March 31, 2010. She didn’t speak to him about pets, smoking or an outstanding hydro bill at that time, and he confirmed that he does not smoke inside the unit. The landlord argues that evidence; she stated that she spoke to the tenant on February 17 to tell him that the notice had an incorrect date and had mentioned that her son would likely eventually move in, but there was no plan for that in the immediate future.

Analysis

This is the tenant’s application to cancel a notice to end tenancy for breach of a material term of the tenancy agreement, and for unpaid rent or utilities. The landlord has the burden of proving that a material term has been breached.

I find that the 1 Month Notice to End Tenancy for Cause was deemed served on the tenant on February 12, 2010, and that the Tenant’s Application for Dispute Resolution was filed on February 16, 2010, which is within the 10 days required under the *Act.*

I also find that the notice to end tenancy issued on February 9, 2010 cannot have an expected move-out date earlier than March 31, 2010.

The Residential Tenancy Policy Guideline deals with material terms of tenancy agreements. It states that: "To end a tenancy agreement for breach of a material term a landlord must establish that the tenant breached a material term and that the tenant did not rectify the breach within a reasonable time after notice to do so by the landlord. To determine the materiality of a term, an arbitrator will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term, in this case the landlord, to present evidence and argument supporting the proposition that the term was a material term. A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement." In the circumstances, I find that the no smoking rule and the no pets rule, are both material terms of the tenancy.

With respect to the 1 Month Notice to End Tenancy for Cause, the *Act* requires that the tenant be given written notice of the breach, and then if the tenant has failed to correct the situation within a reasonable time, the notice to end tenancy may be issued. I have not been provided with any written evidence of that, nor did the landlords testify that any such written notice of the breach was ever given to the tenant.

After hearing the evidence of both parties, I find that the landlord is owed $75.09 for hydro. Pursuant to Section 46(6) of the *Residential Tenancy Act*, the landlord may treat the unpaid utilities as unpaid rent 30 days after the tenant has been given a written demand for payment, and then may give notice to end the tenancy for unpaid rent or utilities.

No evidence was lead by the tenant respecting a need to change locks on the rental unit.

Conclusion

After hearing the evidence of the parties, I order that the 1 Month Notice to End Tenancy for Cause is cancelled.

I further order that the tenant's application to change the locks on the rental unit is hereby dismissed.

The tenant is entitled to recover the filing fee from the landlord for the cost of this application, and I order that it be off-set by the utility bill currently outstanding, and the tenant shall pay the landlord the difference of $25.09.

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: March 16, 2010.

Dispute Resolution Officer