

DECISION

Dispute Codes CNC PSF LRE

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a notice to end tenancy issued for cause, to have the Landlord provide services or facilities required by law; and to suspend or set conditions on the Landlords' right to enter the rental unit.

Service of the hearing documents, by the Tenant to the Landlords, was done in accordance with section 89 of the *Act*, sent via registered mail. The Landlords confirmed receipt of the hearing documents.

Landlord (1), Landlord (2), the Tenant, and the Tenant's Witness appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Is the Tenant entitled to an Order to cancel a notice to end tenancy issued for cause under section 47 of the *Residential Tenancy Act*?

Is the Tenant entitled to an Order to have the Landlord provide services or facilities required by law under section 62 of the *Residential Tenancy Act*?

Is the Tenant entitled to an Order to suspend or set conditions on the Landlords' right to end the rental unit under section 70 of the *Residential Tenancy Act*?

Background and Evidence

The Tenant testified and confirmed she did not serve copies of her evidence the Landlords.

Landlord (1) testified that she personally served the Tenant with copies of the Landlords' evidence on March 16, 2010, at the rental unit.

The Tenant confirmed she received the Landlords' evidence on March 16, 2010 and argued that she felt she was prevented from defending herself in response to the

Landlords' evidence. When I asked the Tenant if she submitted evidence in response of the Landlords' evidence the Tenant stated that she had not because she was told it was too late to do so.

The month to month tenancy began on October 1, 2009, with the current monthly rent payable on the first of each month in the amount of \$800.00. The Tenant paid a security deposit of \$400.00 on September 23, 2009.

Landlord (1) confirmed that when she was unable to collect the Tenant's payment for utilities on February 1, 2010, she decided to serve the Tenant personally with a 1 Month Notice to End Tenancy for Cause at the rental unit for reasons which were checked off on the form as 1) tenant has allowed an unreasonable number of occupants in the unit; and 2) the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and 3) the tenant has put the landlord's property at significant risk; and 4) the tenant has caused extraordinary damage to the unit, site, or property; and 5) the tenant has not done required repairs of damage to the unit.

Landlord (1) argued the Tenant has allowed two adult males to move into the rental unit with the Tenant and the Tenant's teenage daughter. Landlord (1) referred to a copy of the tenancy agreement provided in the Landlords' evidence which lists the tenants to be 1 adult and 1 child. The Landlord argues they know the Tenant's father and the Tenant's boyfriend has been occupying the unit since November 2009 and the Landlords have had conversations with the Tenant over the past few months requesting the two males move out of the rental unit. The Landlord argued that she provided a letter from one of the neighbours which states the two male adults are residing at the rental unit. Landlord (1) confirmed there have been no written notices issued to the Tenant informing the Tenant that the tenancy would end if the additional occupants continue to reside in the rental unit.

The Tenant argues that the two males do not live with her. The Tenant stated that she had surgery and her father attended the rental unit to provide support and assistance to the Tenant. The Tenant stated that she has since injured her foot and has a "boot cast" on so the Tenant requires her father's and boyfriend's assistance in getting to appointments and around the rental unit.

Landlord (1) testified the second reason for issuing the notice to end tenancy is supported by the documentary evidence from the Landlords' realtors who have been attempting to show the rental unit to prospective buyers. Landlord (2) argues the rental unit is very messy and the realtors are not able to open doors because of possessions on the floors and that on the day of the open house the Tenant was home and would

not let the realtors or prospective buyers in to see the suite. The Landlord could not provide testimony or evidence to support how or when the Tenant was informed of the showings or the open house.

The Tenant argues that she was not provided notice of the open house and that while the Landlords' primary realtor gives her advance notice of showings there are times when other realtors appear with no prior notice. The Tenant confirmed that she was home on the day of the open house however she missed the Landlord's calls and without advance notice she was not prepared to let people into the rental unit.

Landlord (1) argued the Tenant has put the Landlords' property at significant risk by having three adults and one child live in the small 500 square foot rental unit.

The Tenant argued that she is not putting the rental unit at risk and that the two males are not residing in the rental unit, they are only there to assist her.

The final two reasons for issuing the notice, as confirmed by Landlord (1), are the Tenant has caused extraordinary damage to the unit and the Tenant has not done the required repairs of the damage. Landlord (1) argued the Tenant has damaged the rental unit by a) not opening the bathroom window when showering, causing water to drip down the walls; and b) stapling cable wires to the ceiling throughout the rental unit; and c) stapling lights to the outside of the garage. Landlord (1) confirmed there have been no written notices to the Tenant advising the Tenant to rectify these issues.

The Tenant advised that she is seeking an order to have the Landlord comply with the Act to provide a proper level of heat in the rental unit and to turn on the exterior motion lights.

Landlord (1) testified the rental unit is heated by a natural gas furnace with one programmable thermostat located in the main floor of the rental unit. Landlord (1) confirmed the Tenant has requested to have the heat increased and the Landlord refused and asked the Tenant to use the two electric space heaters provided by the Landlord. Landlord (1) argued the thermostat is programmed for 15 degrees at night and 20 degrees during the day.

The Tenant was unable to provide testimony of the actual temperature readings in her rental unit and did not provide documentary evidence in support of her claim that the exterior motion lights were turned off.

The Tenant has requested to set conditions on the Landlords' right to enter her rental unit because the Landlords are attending the rental unit too often.

Landlord (1) argued that they have had to attend the rental unit on several occasions to attempt to collect the money owed by the Tenant in payment of February 2010 utilities. Landlord (1) testified the Tenant has refused to pay the \$100.00 for February 2010 utilities arguing that she does not have the money to pay them. Landlord (1) stated that the Tenant has also changed a lock in the rental unit, without the Landlords' permission and in doing so has significantly interfered with the Landlords.

The Witness testified that he is the Tenant's boyfriend and that while he does stay at the Tenant's rental unit over night on average three days per week he is not living at the Tenant's rental unit. The Witness argued that he stays with the Tenant to provide her assistance in recovering from her surgery and attending appointments in dealing with the Tenant's injured foot.

The Witness testified there is no damage to the rental unit, the back yard lights are not working, and the Landlords are harassing the Tenant by entering the rental unit and taking pictures without prior notice.

Landlord (1) and Landlord (2) provided testimony relating to the tenancy agreement which states the Landlords will provide notice prior to entering to do a monthly inspection of the rental unit, and both argued they have never entered the suite without providing prior notice to do so. Landlord (1) stated that she knows for certain all of the exterior lights are left turned on at all times and are operational as supported by her photo evidence.

Landlord (1) testified they amended the 1 Month Notice to End Tenancy by adding a hand written reason which lists the Tenant refuses to pay utilities as per their contract and the Tenant displayed unreasonable conduct.

Analysis

The Tenant confirmed that she did not provide the Landlords with copies of their evidence in contravention of section 3.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the respondent Landlords have not received copies of the Tenant's evidence I find

that the Tenant's documentary evidence cannot be considered in my decision. I did however consider the Tenant's testimony.

I do not accept the Tenant's argument that she has been prevented from defending herself in response to the Landlords' evidence for the following reasons: 1) the Tenant confirmed she received the Landlords' evidence on March 16, 2010, eight days prior to the hearing date and she made no attempt to submit evidence in response to the Landlords' evidence; and 2) the Tenant has been provided the opportunity to provide testimony, during today's hearing, in response to or defence of the Landlords' evidence.

In this instance, the burden of proof is on the Landlords to prove the Tenant 1) has allowed an unreasonable number of occupants in the unit; and 2) the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and 3) the tenant has put the landlord's property at significant risk; and 4) the tenant has caused extraordinary damage to the unit, site, or property; and 5) the tenant has not done required repairs of damage to the unit.

In compliance with the principals of natural justice a party must be notified of their alleged breach, given an opportunity to correct the situation, and be advised of the consequences if the matter is not rectified. In the presence of disputed testimony, I find there is no evidence to support the Tenant was informed of the alleged breaches or that failure to correct such breaches in a specified time would cause the tenancy to end. Based on the aforementioned I find the Landlords have failed the burden of proof and I hereby approve the Tenant's request to cancel the 1 Month Notice to End Tenancy for cause dated February 1, 2010.

The Tenant bears the burden of proof in seeking an order to have the Landlords provide services required by law in support of her request to have proper heat and lighting on the exterior of the rental unit. I find the Tenant has failed to provide evidence to prove the actual temperature of the rental unit, at different times throughout the day, and therefore has failed to prove the Landlords are not providing services or facilities in accordance with the law. In regards to exterior lighting in the presence of disputed testimony on the matter and given the Landlords' photographic evidence which clearly displays exterior lights illuminated, I find the Tenant has failed the burden of proof therefore I dismiss the Tenant's claim.

Upon careful review of the evidence I find there is undisputed testimony the Tenant has installed a lock in contravention of section 31 of the Act which provides a tenant must not change locks or other means that give access to common areas of residential property unless the landlord consents, in writing, to the change. As per the

aforementioned I HEREBY ORDER the Tenant to remove the new lock and return the area to its original condition.

In the presence of disputed testimony I find the Tenant has failed to prove the Landlords have been entering the rental unit in contravention of the Act and therefore I dismiss the Tenant's request to suspend or set conditions on the Landlords' right to enter the rental unit. The Landlords and all of their Agents are required to comply with section 29 of the Act which provides the following:

(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

- (i) the purpose for entering, which must be reasonable;

- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

- (d) the landlord has an order of the director authorizing the entry;

- (e) the tenant has abandoned the rental unit;

- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

There is no provision provided under section 47 of the Act to allow a landlord to end the tenancy for unpaid utilities. That being said, there is a provision under section 46 of the Act which provides a landlord may issue a 10 Day Notice to End Tenancy for unpaid rent and/or utilities, if after issuing the Tenant a written demand for the utilities, the tenant fails to provide the Landlord with payment.

Conclusion

The 1 Month Notice to End Tenancy for Cause issued on February 1, 2010 is hereby cancelled and of no force or effect.

I HEREBY ORDER the Tenant to remove the lock in question and return the area to its original condition, no later than March 31, 2010 at 1:00 p.m.

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 25, 2010.

Dispute Resolution Officer