

Decision

Dispute Codes: CNC, OLC, LAT, RR, FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for orders as follows:

1. Cancellation of a One Month Notice to End Tenancy for Cause pursuant to section 49.
2. An order to the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.
3. An order to authorize the tenants to change the locks to the rental unit pursuant to section 70.
4. An order to allow the tenants to reduce rent for services or facilities agreed upon but not provided pursuant to section 65.
5. An order to enable the tenants to recover the filing fee for this application pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenants provided evidence that they served the application for dispute resolution hearing package (the hearing package) to the landlord on May 18, 2010 by registered mail. The landlord testified that she served the tenants with the One Month Notice to End Tenancy for Cause (the notice) by hand delivering the notice to the male tenant on May 16, 2010. Both parties agreed that they were served with these notices and applications. I accept that the landlord and tenant were duly served with the notice and the hearing package.

At the outset of the hearing, the landlord asked for an Order of Possession. She testified that she has another hearing scheduled for July 28, 2010 regarding the tenant's late payment of rent in June 2010. She maintained that the tenants did not pay rent for June 2010 within five days of receiving her June 2, 2010 Ten Day Notice to End

Tenancy for non-payment of rent. She testified that the tenants paid June's rent on June 13, 2010. I have not considered the landlord's application for an Order of Possession regarding the failure to pay rent within five days of receiving the Ten Day Notice to End Tenancy. However, I have taken this into consideration in weighing the landlord's evidence regarding her contention that there has been an ongoing pattern of late rent payments throughout this tenancy.

On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

Issues to be Decided

1. Whether the tenants' application to cancel the landlord's notice to end tenancy for cause should be granted.
2. Whether the tenants are entitled to an order requiring the landlord to comply with the terms of the *Act* regarding inspections of the rental premises.
3. Whether the tenants are authorized to change the locks to the rental premises.
4. Whether the tenants are allowed to reduce their rent for storing some of the landlord's property in the rental premises.
5. Whether the tenants are entitled to recovery of their filing fee for this application.

Background and Evidence

The tenants entered into evidence the written tenancy agreement which commenced on December 29, 2009. Rent on this month to month tenancy was established at \$1,500.00 per month to be paid on the first of each month. The landlord testified that

she continues to hold a \$750.00 security deposit paid on December 4, 2009 and \$250.00 for a pet deposit paid on February 7, 2010.

The landlord issued the One Month Notice to End Tenancy for Cause for the following reasons:

- Tenant is repeatedly late paying rent;
- Tenant has engaged in illegal activity that has, or is likely to damage the landlord's property;
- Tenant has caused extraordinary damage to the unit/site or property;
- The pet deposit was paid no paid within 30 days as required by the tenancy agreement.

The landlord did not provide sworn testimony regarding the alleged illegal activity or the alleged extraordinary damage to the property. She did provide testimony regarding the lateness of the rental payments and the pet deposit. With respect to the matter of late payment of rent, the landlord testified that the tenant's rent was not paid on the first of the month in any of January, February, May or June 2010.

She testified that rent due on January 1, was paid in two installments on January 7, 2010 and January 11, 2010. The tenants testified that the landlord provided her oral agreement to receive the January 2010 payments on those dates. The landlord denied having given permission to delay these payments.

The landlord provided undisputed evidence that rent due on February 1 was not paid until February 3, 2010. This rent was \$50.00 short. The tenants did not pay the remainder until they combined it with their pet deposit of \$250.00 payment on February 8, 2010, which was also late. The tenants testified that there was a bank error, subsequently reversed, which led to this payment being late. The tenants did not provide documentation that confirmed the reversal of this bank error.

The landlord gave evidence that the tenant's May rent payment was two days late. The tenants testified that they did not pay the May rent on time because they were

temporarily away from the rental unit as no water was available on the property at that time.

The landlord testified that she did not receive the June rental payment from the tenants until the day before this hearing. The tenants maintained that they were not aware of problems with the June rental payment until very recently.

The landlord asked for an Order of Possession to take effect on June 30, 2010, the date identified in the notice.

There was considerable testimony provided regarding the tenants' allegations that the landlord has been gaining unauthorized access to the tenant's rental premises without seeking their permission. The landlord denied illegally entering the premises. The tenants asked for authorization to change the locks to prevent the landlord from accessing their premises, if their tenancy is to continue.

The tenants also testified that the landlord has stored some of her personal property on the premises throughout this tenancy. They said that this material included a trailer on the driveway and material in their shed and under their stairs. The landlord gave evidence that some of this material was left for the tenants with the agreement of the male tenant to assist them in cleaning and maintaining the property. The landlord said that the trailer was located on common areas of the property. In their application for dispute resolution, the tenants sought a reduction in their monthly rent of \$300.00 per month to reflect the landlord's storage of material in their rental premises.

Analysis and Findings

Application to Cancel the Landlord's Notice to End Tenancy

Residential Tenancy Policy Guideline #38 provides the following guidance regarding the circumstances whereby a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions...

However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late. A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision...

There is clear evidence that the written tenancy agreement requires the tenant to pay all of the rent by the first of each month. The evidence presented indicates that the tenants have been late in paying their rent on at least three occasions. Although the tenants provided different reasons and explanations for why their rent was not received by the landlord for some of these months, I am satisfied that there is a pattern of late payment of rent throughout this tenancy. The first rent payment was late and issued in two stages, and the most recent rent payment for June 2010 was late. In between, the tenants were late in two other rent payments and in their payment of their pet deposit.

I dismiss the tenants’ application to cancel the landlord’s One Month Notice to End Tenancy for Cause on the basis of the tenants’ repeated late payment of rent and on the basis of the tenant’s lateness in paying the pet damage deposit. There is no need to consider the other grounds cited in the landlord’s One Month Notice to End Tenancy for Cause.

Order of Possession

As I dismiss the tenants’ application to cancel the One Month Notice to End Tenancy for Cause, this tenancy ends on June 30, 2010. At the landlord’s request, I issue the landlord an Order of Possession to take effect at one o’clock in the afternoon on June 30, 2010.

Tenant's Application for an order requiring the landlord to comply with the terms of the Act regarding inspection of the rental premises

The landlord and tenants provided conflicting testimony regarding the tenants' allegation that the landlord has conducted illegal inspections of the rental premises.

Pursuant to Section 56 of the *Act*, the dispute resolution officer may assist the parties settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of minutes of settlement, a decision or an order.

During the hearing, the issue of inspection of the premises and unauthorized access to the property were discussed. The parties engaged in a conversation, turned their minds to compromise and agreed to settle their dispute on this issue. The parties agreed that there was a benefit to ensuring that there was strict compliance with any future requests by the landlord to inspect the property. Both parties agreed to the following terms:

- The parties agreed that for the duration of this tenancy, the landlord will provide written notice at least 24 hours in advance of any proposed inspection of the rental premises.
- Such requests from the landlord will not be unreasonably refused by the tenants, although the parties agreed that it may be necessary to discuss convenient times for an inspection by the landlord.

Tenant's Application to change the locks to the Rental Premises

During the hearing, the female tenant testified that she was only interested in obtaining changes to the locks if their tenancy continues. This tenancy ends on June 30, 2010 and the parties have agreed to a process to ensure that all landlord requests for access to the rental premises will be submitted in writing 24 hours in advance. As this tenancy is ending, I decline the tenants' application to change the locks.

Tenant's Application to Reduce Rent for the storage of Landlord's Property

The tenants' applied for an order to let them reduce their rent by \$300.00 per month to take into account their storage of some of the landlord's personal possessions in the rental premises. Their application asks that they be allowed "to reduce rent for repairs, services or facilities agreed upon but not provided." The tenants have not demonstrated that there was any agreement by the landlord whereby they would charge her to store some of her possessions on their rental premises. In fact, there is evidence to suggest that at least some of this material was of benefit to the tenants.

The tenants have not met the burden of proof required to enable me to authorize them to reduce their rent by any amount. I dismiss the tenants' application in this regard.

Filing Fee

As the tenants have not been successful in their application for dispute resolution, I do not authorize them to recover their filing fee from the landlord.

Conclusion

I dismiss the tenants' application to cancel the landlord's notice to end their tenancy. I issue the attached Order of Possession which takes effect on June 30, 2010. The parties agree to a process whereby the landlord will provide 24 hours written notice of any proposed inspection of these rental premises. I dismiss the tenants' applications to authorize a reduction in rental payments and to recover their filing fee from the landlord.

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*.