



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

CNC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a One-Month Notice to End Tenancy for Cause dated August 26, 2009, purporting to be effective July 31, 2010. Both parties appeared and each gave testimony in turn.

Issue(s) to be Decided

The issue to be determined based on the testimony and evidence is whether the landlord's issuance of the One-Month Notice to End Tenancy for Cause was warranted or should be cancelled as requested by the Tenant. This requires a determination of whether the tenant was repeatedly late paying rent, and whether or not the tenant had significantly interfered with or unreasonably disturbed the landlord or other occupants.

The burden of proof is on the landlord/respondent to justify that the reason for the Notice to End Tenancy meets the criteria specified under section 47 of the Act. The tenant carries the onus of proving the remainder of the claims.

Background and Evidence: One-Month Notice for Cause

The tenancy began prior to 1996. The current rent is set at \$700.00 due on the first day of each month and a deposit of \$320 was paid. Evidence was submitted by the applicant and the respondent, including a copy of a One-Month Notice to End Tenancy for Cause dated June 7, 2010, copies of communications between the parties dating

back several years, incident reports and records of late rent payments. The tenant submitted written testimony, copies of letters, medical information and photographs.

The landlord testified that the tenant was chronically late in paying rent during the tenancy and has received both verbal and written warnings cautioning the tenant that rent is due on the first day of the month. The landlord referred to evidence showing that a written warning was issued on December 14, 2005. However, no recent warnings were in evidence and the landlord had not issued a One-Month Notice for late payment of rent in the past. The landlord's position was that the tenant was fully aware that rent was due on the first day of the month yet persisted in repeatedly paying late which would be a valid reason to issue and enforce a Notice to end Tenancy for Cause.

The tenant testified that he has always paid his portion of the rent on time, but because his roommate sometimes had difficulty depending on when her was received the rent was sometimes paid late. The tenant stated that being permitted to pay within five days of the date rent that rent was due had been an accepted practice in the past.

The landlord testified that the One-Month Notice was also issued because the tenant had significantly interfered with or unreasonably disturbed the landlord or other occupants.

The landlord testified that they needed to remove air in the heating radiators of each suite in the building. The landlord testified that a written notice informing the tenant that the landlord would be accessing this unit was served on the tenant by posting it on the door. The landlord testified that the following day the landlord knocked and entered the unit as planned, finding the tenant inside laying on his bed. The landlord testified that after she opened the valve on the radiator she left the unit without incident. The landlord testified that the tenant lodge a complaint with police accusing the landlord of "break and enter" and made false allegations. These did not result in any charges, but caused the landlord much grief. According to the landlord, this constituted intentional interference and unreasonable disturbance targeted towards the landlord, who was only

trying to perform routine maintenance of the heating system. The landlord testified that it was the latest in a long history of abusive conduct by the tenant against the landlord's staff.

The tenant testified that his reaction in contacting police was warranted because the landlord had failed to give 24 hours written notice required under the Act and had intruded on his privacy. The tenant stated that the landlord did not need to access the unit for the purpose stated and had not brought along any tools or equipment at all. The tenant stated that he would have been prepared for the landlord to enter at the appropriate time, not earlier, because he is on medication and was sleeping when the landlord barged in.

Analysis: One-Month Notice to End Tenancy for Cause

In regards to the issue of repeated late payment of rent, I find that the testimony and evidence of both parties confirm that this did transpire. I find that the tenant was warned back in 2005, but since that time chronically late payments continued without further consequences or written warnings from the landlord. I find that the tenant's position that late payments were implicitly accepted by the landlord by virtue of the fact that the landlord had not taken further steps, has some merit. I find that the landlord should have issued a more recent warning letter to the tenant letting the tenant know that, although late payments were overlooked in the past the practice would no longer be tolerated and the tenancy could be ended if it continued.

Section 26 of the Act specifically requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement. Under section 47, repeated late payment of rent is a valid basis upon which the landlord may end the tenancy for cause.

If it was not clear to the tenant that late payments would jeopardize the continuation of the tenancy before now, I will put this misunderstanding to rest. The tenant should now be aware that paying the rent late is a serious violation of both the Act and that the

tenancy agreement and if repeated could result in termination of the tenancy under section 47.

In regards to the incident purported to confirm that the tenant had significantly interfered with or unreasonably disturbed the landlord or other occupants, I find that prior to the tenant's actions, the landlord had not acted completely in compliance with the Act. Section 29 permits a landlord to enter a rental unit as necessary, provided the the tenant gives permission at the time or not more than 30 days before the entry or the landlord gives the tenant written notice at least 24 hours and not more than 30 days before the entry. However, I find that in this case, the landlord had entered the tenant's unit prior to the 24 hours. In addition, section 90 of the Act provides that a document posted on the door or left in a mail box or mail slot, is deemed to be received by the party on the 3rd day after it has been attached or left.

I find that the landlord's lapse in entering earlier than expected should not have prompted the tenant to lodge a formal police complaint against the landlord, I do not find this action by the tenant to be in violation of the Act. I find that a isolated incident of this nature, at least in the recent past, would not warrant termination of the tenancy by the landlord.

Conclusion

Based on the evidence and testimony, I hereby cancel the One-Month Notice to End Tenancy dated June 7, 2010. In doing so, I caution the tenant that repeated late payment of rent is clear justification under section 47 to terminate the tenancy as is persistent confrontational or bothersome conduct that significantly interferes with the landlord or others.

July 2010

Date of Decision

Dispute Resolution Officer