

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution to cancel a landlord's notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant and his agent and the landlord. The hearing was originally convened on July 5, 2010 and was adjourned to allow the tenant's agent time to review the landlord's late evidence.

The landlord had submitted evidence on June 30, 2010 outside of the 5 days prior to the hearing required. The landlord also submitted evidence of extenuating circumstances including his hospitalization that impacted his ability to submit his evidence within the required timeframe.

As a result of the extenuating circumstances, I accept the landlord's late evidence.

I note the landlord did not verbally request an order of possession during the hearing should the tenant be unsuccessful in his application to cancel the notice to end tenancy.

Both parties were provided an opportunity to provide affirmed testimony and respond to questions, during the hearing.

Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to disregard a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 47, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began on September 1, 1987 as a month to month tenancy with a current monthly rent of \$606.50 due on the 1st of the month. There is no written tenancy agreement available from the start of the tenancy. A tenancy agreement was signed by the parties on October 10, 2008 and was submitted into evidence by the landlord.

Both parties submitted into evidence a copy of a 1 Month Notice to End Tenancy for Cause dated May 17, 2010 with an effective vacancy date of June 30, 2010 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; put the landlord's property at significant risk and that the tenant has breached a material term of the

tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Through his written submission and testimony the landlord contends the tenant:

- On May 11, 2009 assaulted the landlord by grabbing him by the arm to restrain him physically and threaten him;
- On May 17, 2010 a person permitted on the property by the tenant (his employee) uttered a threat to the landlord, police were called and charges are pending;
- Approximately 10 years ago charged at the landlord as a result of an altercation in the laundry room regarding mud and stucco residue getting into the laundry equipment;
- Over a year ago the tenant buzzed the landlord's unit to have him let him and a friend into the residential property and when the landlord went to the door the tenant raised his fist to the landlord but was stopped by his friend from assaulting the landlord;
- In the mid 1990's a person permitted on the property by the tenant was found sleeping in the stairwell next to a pool of vomit who then refused to clean up the mess;
- On several occasions (November 3, 2008 was the only date provided) a person permitted on the property by the tenant has been found sleeping in a storage locker with unsanitary messes of mud, bodily fluids and bloodied band-aids;
- In June of 2008 a letter of complaint was received from another tenant regarding this tenant smoking in his rental unit, thus putting other occupants at risk of jeopardizing their health; and
- Has breached clause 13 of the tenancy agreement by having a person not listed on the tenancy agreement residing in the rental unit in excess of 14 cumulative days in any calendar year contrary to the agreement. The clause goes on state that person will be considered a trespasser and the landlord has the right then to end the tenancy. The tenant was made aware of this breach in a letter dated May 9, 2009.

The landlord has submitted a letter indicating the owner of the property had instructed the property manager on May 9, 2009 to evict the tenant but that the notice was not served on the tenant due to the tenant's illness at the time. The landlord testified that he did not speak to the tenant about the instruction he had been given or why the notice to end tenancy had not been issued at that time.

The tenant's agent testified in response to the landlord's allegations as follows:

- May 11, 2009 that it was the landlord who attacked the tenant who had just recently been released from 27 days in hospital;
- May 17, 2010 the interaction between the tenant's employee and the landlord occurred in the alley behind the property and not on the residential property;

- That the tenant had not signed a new tenancy agreement but when provided with a copy of the tenancy agreement he stated the tenant never received a copy of the new agreement which invalidates the tenancy agreement;
- In any event, the original tenancy agreement was created when the tenant lived with another woman and there should be no restriction of the number of people in the unit to one person.

Analysis

While I make no findings on the matters of the tenancy agreement that the tenant is not happy with, in the absence of any evidence to the tenant's claim of a previously written tenancy agreement, I find that the agreement signed by the two parties on October 10, 2008 now replaces any previous agreement and binds the parties to the new agreement.

As the tenant had previously indicated that he had not signed a new tenancy agreement and yet the landlord was able to produce a copy of the October 2008 tenancy agreement, I accept the landlord's testimony that he did provide a copy of this agreement to the tenant at the time of signing.

In relation to the issues identified by the landlord as giving the landlord cause to end the tenancy, I find all events prior to May 2009 as being irrelevant to this notice to end tenancy, as the landlord has failed to act on those issues in a timely manner.

I find that although the landlord did provide, in writing, a warning to the tenant regarding his friend staying with him the letter itself is unclear and very confusing to understand the landlord's intent or other possible avenues for the tenant such as adding the tenant's friend to the tenancy agreement.

In addition, the landlord has failed to provide any evidence that the tenant's friend is staying with him, thereby providing no support to the claim that the tenant's friend has stayed with him for at least 14 cumulative days in any calendar year.

The landlord has indicated that he has found the friend of the tenant sleeping in various parts of the building but has submitted no evidence that the tenant has allowed her into the building on all or any of those occasions or that she is actually residing with him.

If the friend is found sleeping on the residential property, not in this tenant's rental unit and she is not a tenant of the building the matter is not that of a tenancy but rather of trespassing, outside of the jurisdiction of the *Act*.

I also find that the landlord's failure to act on the incidents of May 2009 to proceed with a notice to end tenancy and subsequent lack of communication with the tenant regarding the notice or the reasons for not issuing it, the landlord accepted those events and did not mitigate any jeopardy.

As to the incident of May 17, 2010, I accept the tenant's agent's testimony that the event occurred off of the residential property and I also find that as the tenant's employee was yelling to the tenant and possibly throwing pebbles at the tenant's window indicates that the tenant had not yet permitted his employee onto the residential property, which is a primary component of cause to end the tenancy.

For these reasons, I find the landlord has failed to provide sufficient evidence of cause to end this tenancy as permitted under Section 47 of the *Act*. Having found this, however, I note the tenant should now be aware of the landlord's intention to end the tenancy should the tenant or person's he allows on the residential property be responsible for any breaches of the *Act*, regulation or tenancy agreement.

Conclusion

Based on my findings above, I order that the tenant can disregard the 1 Month Notice to End Tenancy for Cause issued on May 17, 2010 and find the tenancy in full force and effect.

I find that the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$50.00** comprised of the fee paid by the tenant for this application. I order the tenant may deduct this amount from his next rent payment in satisfaction of this claim, in accordance with Section 72(2)(a) of the *Act*.

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: July 15, 2010.

Dispute Resolution Officer