

DECISION

Dispute Codes: *OPC, CNC, OLC, LRE, FF*

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and the tenant applied to cancel the notice to end tenancy. The tenant also applied for an order to suspend or set conditions on the landlord's right to enter the rental unit and for the landlord to comply with the *Act*.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The hearing was conducted in person and the tenant was assisted by an interpreter.

Issues to be decided

Does the landlord have cause to end the tenancy or should the notice to end tenancy be set aside and the tenancy be allowed to continue? Has the landlord contravened the *Act*? Did the landlord serve proper notice to conduct an inspection of the rental unit?

Background and Evidence

The tenancy started on December 01, 2009. The landlord provides affordable housing. Rent is subsidized and is currently \$362.00, due on the first day of each month.

This dispute between the two parties started on May 20, 2010 when the landlord attempted to conduct an inspection as a follow up to an annual inspection that was conducted on April 29, 2010. The tenant stated that on May 07, he received a letter from the landlord regarding the results of the annual inspection. The tenant stated that he had not been given notice that an annual inspection would be conducted on April 29 and was therefore taken aback when he found out that the manager had entered the rental unit without his knowledge.

The landlord filed into evidence a notice of inspection that was served to the tenant on April 23 by posting it on the front door. The tenant stated that he had not received this notice and saw it for the first time when he received the notice of hearing package

containing the landlord's evidence. The tenant agreed that he had received every other notice that was referred to during the hearing.

The letter dated May 07, advised the tenant that some deficiencies were identified in his rental unit and he was informed that a follow up inspection would be conducted on May 20, 2010. On May 20, the tenant stated that he heard his door bell ring while he was in the shower at approximately 9:00 a.m. He rushed out partially dressed and found that his door was open and the resident manager was at his open door. The resident manager stated that she rang the bell, waited and then used her master key to unlock the door, but the door was opened by the tenant. The resident manager stated that the tenant was dressed in shorts and a shirt and was not scantily clad as per his testimony.

The tenant stated that at first he thought that his home was being broken into and therefore rushed out of the bathroom dressed only in his underwear and a towel. He saw the resident manager at the door. He stated that she informed him that she was there to conduct an inspection, without an apology for startling him. The tenant stated that since he was scantily clad, he asked her to return later to do the inspection. The resident manager argued that the tenant asked her to return the next day and not later that day. She left the unit and spoke with the property manager.

Shortly after, the tenant received a call from the property manager. Both parties offered different versions of this phone conversation. The tenant stated that the property manager was irate and accused the tenant of not permitting the resident manager to do her job by denying her entry into the unit. The property manager stated that he asked the tenant if the resident manager could come later that day to conduct the inspection and the tenant refused. The tenant denied this and stated that the property manager did not ask about the possibility of an inspection later that day, which he would have agreed to. The tenant reported this incident to the police who contacted the resident manager to discuss. No further action was taken.

The landlord sent a letter to the tenant informing him that an inspection would be conducted on June 01 at 12 noon and that the tenant was at liberty to have a witness present. On June 01, the property and resident managers attended the unit for the

purpose of conducting the inspection. The property manager stated that they arrived at the rental unit at noon while the tenant argued that the managers came sometime between 11:30 and 11:40 a.m. and therefore his witness had not yet arrived.

Again both parties have different versions of what ensued during this visit. The property manager is as follows. He stated that the tenant reluctantly allowed them in and asked the resident manager to remove her shoes. The property manager explained the need for her to have her shoes on. He stated that as the resident manager was moving towards the kitchen, the tenant attempted to grab her hoodie. The property manager stepped in and during the heated conversation that followed, the tenant poked the property manager's shoulder with his finger three separate times.

The tenant's version of the incident is as follows. The tenant stated that he allowed both managers into the unit willingly and denied attempting to grab the resident manager's hoodie, as she passed him, on her way to the kitchen. The tenant stated that he remained in the hallway with his back to the wall and the property manager was speaking to him in an aggressive manner and came very close to him. He stated that he put his hand out, and placed his open palm close to the property manager's chest in an attempt to stop the property manager from closing the gap between them. The tenant stated that the property manager shouted "*you touched me*". The tenant responded by wagging his index finger indicating that he did not but the property manager came closer and his finger was now touching the property manager who shouted out again " *you touched me*".

Both parties agreed that the managers left the unit soon after this exchange and the whole incident was over in five to ten minutes. The tenant stated that he was in shock and upset about the way he had been treated by the managers. In addition as the property manager was walking out the door, he told the tenant to pack his bags and expect to be evicted. The tenant went to police and filed a complaint.

The landlord stated that the tenant was aggressive and repeatedly told the landlord that his human rights were being violated. The landlord denied passing any derogatory remarks about new immigrants, to the tenant.

Later that day, the landlord served the tenant with a one month notice to end tenancy for cause with an effective date of July 31, 2010. The notice to end tenancy alleges that the tenant has adversely affected the security, safety and physical well being of the landlord, has jeopardized a lawful right of the landlord and has breached a material term of the tenancy agreement.

Analysis

I have reviewed the submissions of both parties and I have formed the opinion that the past three months have been very stressful on both parties for different reasons. It is my determination that the parties currently find themselves in a situation which has progressively evolved and for which each has made some contribution to its unfolding. I also find that the tenant's problem with the language may have contributed to the deterioration of the landlord/tenant relationship.

I accept the testimony of the tenant regarding not having received the notice of inspection that was posted on his door on April 23. Therefore the anxiety resulting from the inspection report received on May 07 is understandable.

During the inspection on May 20, I find that it is reasonable to accept that the tenant could have been in the shower at 9:00 a.m. and requested the resident manager to return later. The tenant did allow both managers into the unit on June 01 and therefore did not jeopardize a lawful right of the landlord or breach a term of the tenancy agreement.

The landlord was not able to provide any independent evidence to support his complaint that the tenant used physical force to prevent the landlord from conducting the inspection. The landlord's case is entirely dependent on his version of events, a version which is disputed by the tenant. I have no basis for favoring one version over the other.

Other than the understandable angst and stress which accompanies a state of disagreement and uncertainty, the landlord did not provide compelling evidence to

support his claim that the tenant had adversely affected the security, safety and physical well being of the landlord.

I find that the landlord is in compliance with the *Act* with regard to posting 24 hour notices to enter the rental unit and therefore it is not necessary to suspend or set conditions on the landlord's right to enter the rental unit. The tenant would be wise to allow the landlord to conduct inspections without interference. I find it timely to put the tenant on notice that, if such incidents were to occur again in the future and another notice to end tenancy issued, the record of these events would form part of the landlord's case should it again come before a dispute resolution officer, for consideration.

Accordingly, the notice to end tenancy is set aside and the tenancy will continue. The landlord must bear the cost of filing this application.

Conclusion

The notice to end tenancy is set aside. The tenancy will continue.

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 23, 2010.

Dispute Resolution Officer