

DECISION

Dispute Codes: CNC, OLC, ERP, RP, FF

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy and for the recovery of the filing fee. The tenant also applied for an order for the landlord to comply with the *Act*, and make repairs to the rental unit. Both parties attended the hearing and had opportunity to be heard.

Issue to be Decided

Does the landlord have grounds to end this tenancy? Has the landlord complied with the *Act* with regard to maintaining the rental unit?

Background and Evidence

The tenancy began on January 25, 2009. On June 09, 2010, the landlord served the tenant with a one-month notice to end tenancy for cause. The notice to end tenancy alleges that the tenant is repeatedly late paying rent and has caused extraordinary damage to the property.

The tenant stated that he paid rent by the fifteenth of each month pursuant to a letter from the landlord dated October 16, 2010 in which the landlord states that he would accept rent no later than the fifteenth of each month. During the hearing the landlord requested that rent be paid on the first of each month and the tenant agreed to do so.

The landlord stated that the tenant has delimbed two spruce trees and that the trees now look very unsightly. The tenant stated that he had the verbal permission from the landlord to trim the trees. The landlord denied having agreed to let the tenant trim the trees. The landlord also stated that the tenant removed a Birch tree from the front yard. The tenant argued that the tree was dying and it was leaning over causing a hazard for vehicles driving down the street.

The tenant stated that he has repeatedly requested the landlord to conduct repairs and maintenance around the rental unit and the landlord has not complied with his requests. The tenant has filed photographs to support his requests for maintenance. The tenant has also filed letters sent to the landlord requesting maintenance and repairs. These

letters are dated December 01, 2009, February 01 and March 01, 2010. The tenant stated that the landlord has not carried out these repairs to date.

The tenant is requesting that the telephone jack, light on the ceiling fan, wires in the kitchen, pipe in the basement, hot tub, broken window, wires on fence and holes in garage foundation be fixed. In addition the tenant has requested that the wasp nest in the garage, wishing well, satellite dish and branches on the roof be removed

Analysis

In order to support the notice to end tenancy, the landlord must prove at least one of the grounds alleged, namely that the tenant was repeatedly late paying rent or has caused extraordinary damage to the landlord's property.

I find that the tenant had the approval of the landlord to pay the rent by the fifteenth of the month. Therefore even though the tenancy agreement states that rent is due on the first of the month, I find that the tenant was not late on rent. At the hearing the landlord put the tenant on notice that rent would be due on the first of each month. Therefore the tenant is required to make future rent payments by the first of each month.

The tenant stated that he had the verbal approval of the landlord to trim the trees. The landlord denied this. As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. The tenant did not have any written confirmation that he was allowed to trim the trees and therefore by delimbing the trees, he breached a term of the tenancy.

However, I do not find that the tenant caused extraordinary damage that warrants putting an end to the tenancy. Therefore, I allow the tenant's application and set aside the landlord's Notice to End Tenancy dated June 09, 2010. As a result, the tenancy shall continue in accordance with its original terms.

Section 32 of the *Residential Tenancy Act* addresses a landlord's obligation to repair and maintain. It states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law. Based on the photographs, letters and verbal testimony of the tenant I order the landlord to complete the following repairs to the unit within two months of receipt of this decision.

1. Fix the wires in the kitchen, phone jack, ceiling light and pipe in the basement
2. Repair or remove hot tub
3. Fix broken window pane
4. Remove wasp nest
5. Clean back yard of debris
6. Fix wires along the fence and remove satellite dish and wishing well
7. Organize exposed wires in side yard
8. Remove branches that have fallen on roof and into gutters
9. Fix holes in the garage foundation

Conclusion

The notice to end tenancy is set aside and the tenancy will continue. The tenant may make a one time deduction of \$50.00 for the recovery of the filing fee, from the next rent payment. 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 27, 2010.

Dispute Resolution Officer