Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNC

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated August 28, 2010, a copy of which was submitted into evidence, indicating that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, and put the landlord's property at significant risk.

The tenant had also requested more time to make the application to dispute the Notice. However as the One-Month Notice was received on August 31, 2010 and the application to cancel the Notice was made on September 1, 2010, I find that the tenant was well within the 10-day statutory deadline under the Act to dispute the Notice.

Both parties appeared and gave testimony in turn.

Issue(s) to be Decided

The tenant is disputing the basis for the Notice and the issues to be determined based on testimony and evidence is:

- whether the criteria to support a One-Month Notice to End Tenancy under section 47of the *Residential Tenancy Act*, (the *Act*), has been met, **or**
- whether the notice should be cancelled on the basis that the evidence does not support any one of the causes shown.

Burden of Proof: The burden of proof is on the landlord to show the notice was justified.

Background and Evidence

The tenancy began in 1999 and both parties stated that there have been issues of disagreement and disputes between the landlord and the tenant for several years.

The tenant's application stated that the landlord used the wrong Notice to End Tenancy form. The tenant also indicated that the allegations being made by the landlord were false because there was no risk to the landlord's property or other residents.

The tenant testified that he had been harassed by the landlord for an extended period of time spanning years and that this persecution was affecting the tenant's ability to avoid contravening the Act.

In support of the validity of the Notice, the landlord had submitted into evidence written testimony dated September 28, 2010 that was also served on the tenant. The testimony indicated that the tenant had had significantly interfered with or unreasonably disturbed other occupants by using a tape recorder to record conversations of others in the common area and had also upset people by taking photographs of residents and their guests. The landlord testified that he received several complaints from residents about this practice.

The tenant did not deny using the tape recorder but explained that it was only placed in the window for the purpose of gathering evidence of unreasonable noise being made by other residents that disturbed the tenant's quiet enjoyment. The tenant stated that his rental unit was located in an area exposed to the doors as well as the common area and he had made numerous complaints to the landlord about being annoyed by frequent loud party conversation and merriment which sometimes made it difficult for him to hear his television. The tenant stated that he felt it was the landlord's responsibility to intervene. However, despite the tenant's efforts, the landlord failed to take any measures to control the boisterous activities of the other residents on the common balcony. The tenant stated that under the Act, the landlord had an obligation to protect his right to quiet enjoyment by putting up signs reminding others to converse quietly.

The landlord stated that there were no complaints from any other residents about excessive noise. According to the landlord, investigation of the tenant's complaints found no support for the allegations of excessive noise.

The landlord testified that the Notice was also based on the fact that the tenant neglected to adequately clean and maintain his rental unit. The landlord testified that it was in a state that compromised the health and safety of other occupants, and put the landlord's property at risk because the tenant's floor was almost covered with papers, there was dirty clothing stacked around the suite and the kitchen was unhygienic. The landlord testified that other residents had lodged complaints about the smell emanating from the tenant's suite when he opened the door. The landlord was also worried about this being a fire hazard and creating an environment for vermin. The landlord testified that the tenant's unit was so cluttered that there was insufficient room for the vacuum to fit around things. The landlord testified that, out of concern for the situation, he had

obtained an offer of support to have cleaners come in at no cost to the tenant on a regular basis. However the tenant was not amenable to this arrangement.

The landlord was also concerned that the tenant evidently made it a practice to pour toxic drain-cleaner down the pipes and believed that this may have been responsible for leaks that occurred in the unit.

The landlord's position is that the situation can not be allowed to persist nor deteriorate further and that the tenant's refusal to cooperate had left the landlord with no choice but to end the tenancy for cause.

Tenant testified that the landlord's written testimony submitted into evidence discussing his alleged disabling condition was highly prejudicial, irrelevant and inappropriate. The tenant also testified that the landlord's actions in contacting certain outside agencies was intrusive and was proof that the landlord's motives were aimed at harassing the tenant and conducting a "smear campaign" against him throughout the building.

The tenant testified that the landlord had entered the unit without sufficient notice on a pretense of emergency and then tried to make the case that the tenant was neglecting to keep the unit clean and tidy.

The tenant acknowledged that he did have papers in piles on the floor, but explained that there was a storage issue in his unit and that he used the floor to stack papers and as a working surface to do paperwork and sort his files, documents and magazines. The tenant stated that at the time that the landlord saw his unit, he was in the process of working on some papers which were piled in an area on the floor temporarily.

In regards to the laundry, the tenant explained that he had recently decided not to take his laundry out to the machines in the building nor the commercial laundry, but to wash his own clothing by hand in the bath tub instead. According to the tenant, this has created a backlog with his laundering which he was currently attempting to deal with. The tenant explained that he had clean, semi-clean and dirty clothing stacked or in bags in particular designated areas. The tenant acknowledged that there may be a laundry odour on hot days, but stated that this was not extreme and would not be detectible in adjacent units.

The tenant stated that he only employed drain cleaner when necessary. The tenant stated that the drainage pipes in the building were old and any problems that had occurred in the past were due to normal wear and tear.

The tenant's position was that the One-Month Notice was not supported by the facts and should be cancelled.

Analysis

I find that the question of whether or not the tenant's conduct in recording the conversations and taking photos of people significantly interfered with and unreasonably disturbed another occupant or the landlord is measured by the perception of the complainants, completely independent of the intent or motive of the perpetrator.

Whether or not the tenant had what he perceived to be a valid reason for engaging in this practice, I must accept the landlord's testimony that other occupants in the building probably do see this as intrusive and unnerving. I find it likely that residents had made complaints to the landlord about the tenant's conduct as the landlord had alleged. While I acknowledge the tenant's explanation that he was merely trying to document bothersome conduct of others, I find that the argument that this goal should somehow serve to excuse or mitigate the tenant's own noncompliant conduct has little merit. There is no provision in the Act that extends immunity for a reciprocal breach of the Act.

That being said, I still cannot find that the tenant's interference to date was sufficiently significant to justify terminating this long-term tenancy under section 47 (1)(d)(i).

However, I do find it inappropriate for the tenant to be permitted to continue to monitor others in this fashion and if the tenant persists in doing so, I find that it could then constitute significant interference and unreasonable disturbance. Given the above, I hereby order that the tenant cease and desist in the practice of making an overt display of recording and/or photographing other residents or their guests.

In regards to the causes put forth to warrant terminating the tenancy under section 47(1)(d)(ii) and 47(1)(d)(iii), I find that the Act imposes a high standard that must be met in proving that the tenant has *seriously* jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, and put the landlord's property at *significant risk*. I find that to meet this criteria, a genuine hazard must exist.

In regards to the landlord's allegation that the tenant had damaged the drains by pouring chemical drain cleaner down them, I find that this allegation was not adequately supported by the to prove that this action by the tenant was responsible for the failure of the plumbing.

However, because plumbing fixtures and water pipes fall under the landlord's responsibility to repair and maintain I find that, should any problems arise with the plumbing at any time, the tenant is required to report the matter to the landlord and must not take measures on his own to rectify.

In regards to the state of the tenant's unit, I find that the threshold to terminate a tenancy under section 47(1) (d) is high. While the landlord speculated that the condition

of the unit could cause a fire or vermin infestation, I find that no incidents of this nature have yet occurred and it is difficult to gage the risk level merely relying on the landlord's verbal testimony, rather than independent evidence such as a formal risk assessment from a qualified professional.

Although the landlord offered very believable verbal testimony that the situation met the criteria to justify enforcing the One-Month Notice, I find that this verbal testimony was effectively disputed by the tenant who took the opposite position acknowledging that while there were papers, refuse and clothing stacked around the suite, these did *not* seriously jeopardize the health and safety nor pose a significant property risk.

It is important to note that in a dispute such as this, the two parties and the testimony each puts forth, do not stand on equal ground. In other words, it is the landlord who carries the onus of proving during these proceedings, that the Notice to End Tenancy was justified under the Act. I find that, in any dispute where the evidence consists of conflicting and disputed verbal or written testimony, in the absence of independent evidence, then the party who bears the burden of proof is not likely to prevail because one person's testimony functions to cancel the other's.

In this instance I found it was not necessary to determine which party's position was more credible or which set of "facts" was more believable. In short, I find that the party seeking to end the tenancy, that being the landlord, had not sufficiently proven on a balance of probabilities that the criteria under sections 47(1)(d)(ii) or 47(1)(d)(iii) of the Act was satisfied based on the evidence before me.

Given the evidence, I find that the One-Month Notice to End Tenancy for Cause must be cancelled.

Section 62(2) of the Act gives a Dispute Resolution Officer the authority to make any finding of fact or law that is necessary or incidental to making a decision or an order under the Act and to make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Notwithstanding the fact that the condition of the tenant's unit did not support the landlord's Notice, the upkeep of the rental unit must satisfy the standards of section 32 of the Act. A contravention of section 32 of the Act does not function on its own to justify ending a tenancy. Section 32 enlists different criteria with a lower threshold than a violation under section 47(1)(d)(ii) would in that it imposes responsibilities on the tenant to maintain <u>reasonable</u> health, cleanliness and sanitary standards throughout the rental unit.

In this instance I find that based on the testimony and evidence of both parties the tenant was not in compliance with section 32 of the Act. Regardless of any logical reasons or mitigating factors that may have prevented him from doing so, I find the tenant is still obligated under the act to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and that he violated section 32 by keeping piles of dirty and clean laundry in bags and stacked around the unit and by storing or managing piles of papers placed on the floor.

Accordingly I find it necessary to issue an order requiring that the tenant comply with the legislation by cleaning and organizing the rental unit, removing garbage and keeping the floor reasonably clear of items pursuant to section 32 of the Act and to consistently maintain reasonable health, cleanliness and sanitary standards throughout the rental unit.

I must point out that, should the tenant fail to comply with this order within 30 days, the landlord is at liberty to issue a One-Month Notice for Cause under section 47(1)(l).

This section of the Act states that a landlord may issue a One-Month Notice to End Tenancy for Cause if the tenant has not complied with an order of the director within 30 days of the later of the following dates:

(i) the date the tenant receives the order; and

(ii) the date specified in the order for the tenant to comply with the order.

Under section 29(2) of the Act the landlord is entitled to inspect the unit on a monthly basis, with proper written notice and may do so to ensure the tenant is in compliance with section 32.

The landlord is cautioned that section 29 provides that a landlord must not enter a rental unit for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

I order that the landlord is required to comply with the above.. Section 90 of the Act provides that a notice posted on the door is deemed to be served in 3 days, so this amount of time must be added to the requisite 24-hour-notice specified, unless the notice is served in person.

Conclusion

In light of the fact that the landlord has failed to sufficiently prove that any of the criteria listed under section 47 has been satisfied, I hereby order that the One-Month Notice to End Tenancy dated August 28, 2010 be cancelled and of no force nor effect.

On my authority under section 62(1)(b) of the Act, the tenant is hereby ordered to comply with section 32 of the Act and consistently maintain reasonable health, cleanliness and sanitary standards throughout the rental unit in future.

This order must be served on the tenant and failure to comply could warrant a One Month Notice for Cause to be issued by the landlord under section 47(1)(l).

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: October 2010.

Dispute Resolution Officer