

DECISION

Dispute Codes:

DRI, CNC, OLC

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for cause. The tenant also disputed the amount that the landlord intended to raise the rent by. Both parties attended the hearing and had opportunity to be heard.

Issue to be Decided

Does the landlord have grounds to end this tenancy? Is the amount of the rent increase in keeping with Legislation?

Background and Evidence

The tenancy began in 1992. The monthly rent is \$550.00 and does not include utilities. The housing unit is a four plex. The tenant occupies one of the lower suites and shares utility costs with the upper occupant. The tenant lives alone and sometimes has his girlfriend over. The upper level is occupied by a family of four.

On July 01, 2010, the landlord served the tenant with a notice of a rent increase. The rent increase was set at \$100.00 per month. Therefore the tenant would be paying \$650.00 plus 35% of the utilities. The tenant disputed the rent increase and requested that his share of the utilities be lowered due to the number of occupants above and their use of a dish washer and laundry machines, both of which are not available for the tenant's use.

On August 25, 2010, the landlord served the tenant with a one-month notice to end tenancy for cause.

The reasons for the notice to end tenancy are that the tenant has significantly interfered with or unreasonably disturbed another occupant, seriously jeopardized the health or safety of another occupant and put the landlord's property at significant risk. The reasons also include that the tenant has engaged in illegal activity that has adversely affected the quiet enjoyment of another occupant and jeopardized a lawful right or interest of another occupant.

The landlord received complaints from the upper occupant regarding the tenant smoking banned substances inside the unit. The smoke made two of the four occupants sick. The landlord gave the tenant a verbal warning at the end of June and followed it up with written warnings on August 01, August 25 and October 01. In addition, the landlord gave the tenant a written warning on July 01, about the presence of uninsured vehicles on the property despite the earlier requests to have them removed. The landlord filed copies of these letters.

The tenant denied smoking inside the unit. He stated that he did not smoke at all and definitely did not smoke banned substances. He also stated that his frequent visitor who also testified at the hearing, did not smoke at all. The tenant stated that the neighbouring home has a balcony which is close to the upper unit and very often, people were seen smoking on this balcony.

During the hearing the above reasons for the notice to end tenancy were discussed at length. The parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Analysis

As explained to the landlord pursuant to Section 43 of the *Residential Tenancy Act*, a landlord may impose a rent increase only up to the amount:

- (a) Calculated in accordance with the regulations,
- (b) Ordered by the director or
- (c) Agreed to by the tenant.

The allowable percentage rent increase for each calendar year is calculated according to the inflation rate. The rate for the year 2010 is 3.2%

Based on the rent increase permitted by the Regulations, the landlord may increase the rent by \$17.60. The tenant received the notice of rent increase on July 01, 2010 and therefore this increase will be effective on November 01, 2010. Effective this date the tenant will pay a monthly rent of \$567.60.

Both parties agreed that the tenant would pay 25% of the utility bill in addition to his raised rent.

Pursuant to Section 63 of the *Residential Tenancy Act*, the dispute resolution officer may assist the parties settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

During this hearing, the parties reached an agreement to settle their dispute. Specifically, it was agreed that the landlord would withdraw the notice to end tenancy and allow the tenancy to continue. Both parties agreed to the following terms:

1. The tenant agreed to ensure that neither he nor his visitors would smoke inside the rental unit.
2. The tenant agreed to remove all uninsured vehicles from the yard or have them insured.
3. The tenant agreed to pay 25% of the utility bills.
4. The parties agreed to exercise any additional goodwill and spirit of cooperation necessary in regard to the above undertakings, which might be required to achieve a positive landlord – tenant relationship.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties.

The tenant would be wise to refrain from allowing his visitors to smoke inside the rental unit and also to ensure that all vehicles on the property are insured. I find it timely to put the tenant on notice that, if such behaviours 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.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue as per the above terms.

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 08, 2010.

Dispute Resolution Officer