

DECISION

Dispute Codes MT, CNC, RPP, LRE, O

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 66;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 47;
- an order requiring the landlord to return the tenants' personal property pursuant to section 65; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

This hearing was held in two stages. On both occasions, the parties attended and were given a full opportunity to be heard, to present evidence, to call witnesses and to make submissions. At the October 8, 2010 hearing, the landlord said that she posted a 1 Month Notice to End Tenancy for Cause on the tenant's door at 1045 a.m. on August 10, 2010. The female tenant (the tenant) testified that she placed a copy of her application for dispute resolution in the landlord's mail slot, but was uncertain of the date of doing so. The landlord confirmed that she received this copy on September 7, 2010. I am satisfied that both parties served these documents to one another.

On October 8, 2010, the landlord said that she sent the tenants a copy of her evidence package by registered mail on October 1, 2010. She provided a Canada Post Tracking Number. The tenant testified that she had not received this package, although she had received notification from Canada Post the previous day. The tenant was deemed to have received this evidence package on October 7, 2010, five days after it was sent. Since it appeared important that the tenant have this evidence package for this hearing

and the tenant committed to obtain it from Canada Post as soon as possible, I adjourned this hearing to October 14, 2010, with the agreement of the parties.

The hearing reconvened on October 14, 2010. The tenant said that she had been unable to obtain the registered mail package from Canada Post. She said that the spelling of her name varied from that on the envelope, and she had no acceptable identification to obtain this document. The landlord objected to a second adjournment as she said that she was seeking an Order of Possession if the tenants' application to cancel the notice to end tenancy were dismissed. The tenant said that she preferred to proceed with this matter as she did not want this process to be prolonged. I decided that the landlord's evidence package had been served in accordance with the *Act* and that there was no need to adjourn this hearing a second time.

During the first stage of the hearing on October 8, 2010, the tenant had difficulty refraining from providing comments while others were speaking. This pattern continued on October 14, 2010 when the tenant interrupted the landlord's provision of her evidence. While I was cautioning her about this interruption, the tenant left the location where she was connected to the hearing. I continued the hearing without the tenant's participation at that stage. As the hearing continued, the landlord said that the tenant had appeared outside her office door and was directing verbal abuse at her from that vantage point.

Issues(s) to be Decided

Are the tenants entitled to an extension of time to make her application for dispute resolution? Are the tenants entitled to a cancellation of the landlord's notice to end tenancy for cause issued on August 10, 2010? Is the landlord entitled to an Order of Possession? Are the tenants entitled to an order requiring the landlord to return the tenants' personal property? Are the tenants entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Background and Evidence

This one-year fixed term tenancy commenced on November 5, 2009. Monthly rent is set at \$735.00, payable on the first of each month. The landlord testified that she continues to hold the tenants' \$357.50 security deposit paid on November 5, 2009.

The landlord provided examples of the types of behaviour demonstrated by the tenants that led to her issuance of the notice to end tenancy for cause. She testified that this pattern of behaviour had escalated since she provided the notice to end tenancy. She said that the tenants were involved in fights in the hallways and that the male tenant lunged at people in the lobby. She also referred to an August 5, 2010 police report of an incident involving the male tenant. However, the landlord's representative said that she had no first-hand knowledge of most of the events that gave cause to the August 10, 2010 notice, as she was hired by the landlord as a building manager in July 2010. She said that she relied on notes from the previous building manager. She did not present these notes as written evidence, nor did she present the former building manager or anyone else familiar with the occurrences prior to her being hired in July 2010. The written evidence that she provided was dated after August 10, 2010 and pertained almost exclusively to events that occurred after that date.

Analysis

Tenant's Application for an Extension of Time to File for Dispute Resolution

As the landlord's notice to end tenancy was posted on the tenants' door, service of this document took effect three full days after August 10, 2010. The tenants then had ten full days to commence an application for dispute resolution. The tenants' ten-day period for doing so expired on August 23, 2010. Although the tenant's initial application was signed on August 16, 2010 and stamped as received by the Residential Tenancy Branch on August 17, 2010, it appears that the tenant submitted a slightly revised amendment to that application on August 25, 2010. As there seems to be some uncertainty as to the date the tenants' application was received, I allow the tenants' application for an extension of time to file for dispute resolution.

Tenants' Applications for the Return of her Personal Property and for an Order
Suspending or Setting Conditions on the Landlord's Right to Enter the Rental Unit

As the tenant offered insufficient evidence in this regard, I dismiss her applications for these orders.

Tenants' Application to Cancel the Landlord's Notice to End Tenancy for Cause

The landlord has issued a one month notice to end tenancy for cause pursuant to section 47(1)(d) and (e) of the *Act* because she maintains that :

the tenants have:

- significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- put the landlord's property at significant risk;

the tenants have engaged in illegal activity that has, or is likely to:

- damage the landlord's property; and
- adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

When a landlord issues such a notice and the tenant disputes the notice the onus is on the landlord to prove cause for issuing the notice.

Illegal activity

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offence under the *Criminal Code of Canada*. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the Dispute Resolution Officer and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw. In considering whether or not

the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

The landlord said that the tenants permitted known drug users and people banned from the building to visit them. However, the landlord gave insufficient evidence of any illegal activity and provided no evidence of any such activity that occurred prior to the issuance of the August 10, 2010 notice. I allow the tenants' application to cancel the landlord's application for a notice to end tenancy as I reject the landlord's assertion that the tenants have engaged in illegal activity.

Significant Risk to the Landlord's Property

The landlord's only testimony regarding the tenants' placement of the landlord's property at significant risk was that the tenants' frequent banging on the walls might damage the walls and the landlord's property. The landlord has failed to prove to the extent necessary that these actions place the landlord's property at significant risk. I allow the tenants' application to cancel the landlord's application for a notice to end tenancy as I reject the landlord's claim that the tenants placed the landlord's property at significant risk.

Significant Interference with or Unreasonable Disturbance of Other Building Occupants or the Landlord

The written and sworn evidence of the landlord's representative was almost exclusively directed at events that transpired after the August 10, 2010 issuance of the notice to end tenancy. She also noted that the tenant has not paid rent for two months and that she intends to issue a 10 Day Notice to End Tenancy for Unpaid Rent if that situation is not corrected. The record of what occurred after the issuance of this notice is not helpful in understanding the reasons for issuing the August 10, 2010 notice to end tenancy for cause. The landlord's representative admitted that she had little first-hand knowledge of the tenants' behaviour prior to her issuance of the August 10, 2010 notice.

Overall I find there was insufficient evidence from the landlord to allow me to find that the tenants significantly interfered with or unreasonably disturbed another occupant or the landlord prior to August 10, 2010. I allow the tenants' application to cancel the landlord's application for a notice to end tenancy as I reject the landlord's claim that the tenants significantly interfered with or unreasonably disturbed other building occupants or the landlord prior to August 10, 2010.

As I have allowed the tenants' application to cancel the notice to end tenancy for cause, I deny the landlord's oral request for an Order of Possession.

Conclusion

I allow the tenants' application for more time to file their application for dispute resolution. I allow the tenants' application to cancel the landlord's Notice to End Tenancy for Cause dated August 10, 2010. That notice is cancelled with the effect that this tenancy shall continue.

I dismiss the tenants' applications for return of her personal property and for an order suspending or setting conditions on the landlord's right to enter the rental unit.

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*.